

United States
Circuit Court of Appeals

For the Ninth Circuit.

— 18

UNITED STATES OF AMERICA,
Appellant,
vs.

ARTHUR J. EIDE, by BERTHA K. EIDE, his
Guardian ad Litem,
Appellee.

—
Transcript of Record
—

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

JUN 26 1935

PAUL R. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Southern Division of the United States
District Court for the Northern District of
California.

No. 991-L.

ARTHUR J. EIDE, by BERTHA K. EIDE, His
Guardian ad Litem,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

APPEARANCES

Attorneys for Appellant:

H. H. McPIKE, Esq.,

United States Attorney.

THOS. C. LYNCH, Esq.,

Asst. U. S. Attorney.

Attorney for Appellee:

ALVIN GERLACK, Esq.,

Mills Bldg.,

San Francisco, Calif.

[Title of Court and Cause.]

COMPLAINT—WAR RISK INSURANCE.

Plaintiff complains of the defendant and alleges:

I.

That plaintiff is a citizen of the United States
and a resident of the Northern District and State
of California, and of the County of Siskiyou therein.

II.

That this action is brought under the War Risk Insurance Act of October 6, 1917, and the World War Veterans Act of June 7, 1924 and amendatory acts, and is based upon a policy or certificate of insurance issued under said acts to the plaintiff by the defendant.

III.

That on or about the 23rd day of July, 1917, plaintiff entered the armed forces of the defendant; that he served the defendant as a Sergeant first class in its Army from the said July 23, 1917, to on or about January 29, 1919, when he was honorably discharged from said service and that during all of said time he was employed in active service of defendant.

IV.

That immediately after entering the defendant's said service plaintiff made application for and was granted insurance in the sum of \$10,000.00 by the defendant, who thereafter issued to plaintiff its certificate No. T 1,841,792 of his compliance with said acts, so as to entitle him and his beneficiaries to the benefits of said acts, and the rules and regulations of said bureaus and the directors thereof, and that during the term of his said service the defendant deducted from his pay for such [1*] service, the monthly premiums provided for by said acts and the rules and regulations promulgated by the defendant. That plaintiff paid all premiums promptly

*Page numbering appearing at the foot of page of original certified Transcript of Record.

when the same became due on said policy until Jan. 29, 1919.

V.

That while serving the defendant as aforesaid, the plaintiff contracted certain diseases, injuries and disabilities resulting in and known as neuro-psychiatric disease, and other disabilities as shown by the records and files of the Veterans' Administration.

VI.

That said diseases, injuries and disabilities have continuously since January 29, 1919, rendered and still do render the plaintiff wholly unable to follow any substantially gainful occupation, and such diseases, injuries and disabilities are of such a nature and founded upon such conditions that it is reasonably certain they will continue throughout plaintiff's lifetime in approximately the same degree. That plaintiff has been, ever since January 29, 1919, and still now is, permanently and totally disabled by reason of, and as a direct and proximate result of such disabilities above set forth.

VII.

That plaintiff on April 22nd, 1929, made application to the defendant, through its Veterans Bureau and the Director thereof, for the payment of said insurance for permanent and total disability, and that said Veterans Bureau, and the Director thereof have refused to pay plaintiff said insurance and on June 29, 1932 disputed plaintiff's claim to said

insurance and disagreed with him concerning his rights to the same. [2]

That under the provisions of the said act and other acts amendatory thereof, plaintiff is entitled to the payment of fifty-seven and 50/100 Dollars (\$57.50) for each and every month transpiring since January 29, 1919, and continuously thereafter so long as he lives and continues to be permanently and totally disabled.

IX.

That plaintiff has employed the services of Alvin Gerlack, an attorney and counsellor at law, duly licensed and admitted to practice before this court and all courts of the State of California. That a reasonable attorney's fee to be allowed to plaintiff's attorney for his services in this action is ten per centum (10%) of the amount of insurance sued upon and involved in this action, payable at a rate not exceeding one-tenth of each of such payments until paid in the manner provided by Section 500 of the World War Veterans Act of 1924 as amended.

WHEREFORE plaintiff prays judgment as follows:

First: That plaintiff since January 29, 1919, has been and still is, permanently and totally disabled.

Second: That plaintiff have judgment against the defendant for all of the monthly installments of \$57.50 per month for each and every month from the said January 29, 1919, and continuously so long

as he lives and remains permanently and totally disabled.

Third: Determining and allowing to plaintiff's attorney a reasonable attorney's fee in the amount of ten per centum (10%) of the amount of insurance sued upon and involved in this [3] action, payable at a rate not exceeding one-tenth of each of such payments until paid in the manner provided by Section 500 of the World War Veterans Act of 1924 as amended, and such other and further relief as may be just and equitable in the premises.

ALVIN GERLACK

Attorney for Plaintiff. [4]

United States of America,
District and State of California,
County of—ss.

Bertha K. Eide, being first duly sworn, deposes and says:

That *he* is the plaintiff in the above entitled action.

That *he* has heard read the foregoing complaint and knows the contents thereof.

That the same is true of *his* own knowledge and belief except as to those matters stated upon information and belief and that as to those matters *he* believes them to be true.

BERTHA K. EIDE

Subscribed and sworn to before me this 14th day of July, 1932.

[Seal]

HENRIETTA HENFREN

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jul. 19, 1932. Walter B. Mal-
ing, Clerk. [5]

[Title of Court and Cause.]

ANSWER TO COMPLAINT.

The United States of America for answer to the complaint of plaintiff herein denies each and all of the allegations thereof.

WHEREFORE, defendant prays that plaintiff take nothing by his said action and that defendant have its costs herein incurred.

April 28, 1933.

I. M. PECKHAM

United States Attorney.

Service of the within answer by copy admitted this 28 day of April, 1933.

ALVIN GERLACK

Attorney for Pltf.

[Endorsed]: Filed Apr. 29, 1933. Walter B. Mal-
ing, Clerk. [6]

[Title of Court and Cause.]

JUDGMENT.

This cause came on regularly to be tried on the 20th day of February, 1934, and was thereafter regularly continued to the 23rd day of February, and thereafter regularly continued to the 26th day of February and thereafter regularly continued to the 27th day of February, 1934, Alvin Gerlack, Esq., appearing as counsel for the plaintiff, and Hon. H. H. McPike, United States Attorney, and Gustav Hjelm, Esq., and Thomas C. Lynch, Esq., Assistant United States Attorneys for the Northern District of California, appearing as counsel for the defendant.

A jury of twelve persons was regularly impaneled and sworn to try said cause. Witnesses on the part of plaintiff and defendant were sworn and examined, and documentary evidence on behalf of the parties hereto, was introduced.

After hearing the evidence, arguments of counsel, and the instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into court their verdict in words and figures as follows, to-wit:

[Title of Court and Cause.]

“VERDICT OF THE JURY.

We the jury in the above entitled cause, find for the plaintiff Arthur J. Eide, and fix the date of his permanent and total disability from

following continuously, any substantially gainful occupation, beginning January 29, 1919.

Dated: Feb. 27, 1934.

(Signed) S. E. CLARK

Foreman." [7]

And the Court having fixed the plaintiff's attorney's fees in the amount of ten per centum (10%) of the amount of insurance recovered in this action:

It is Ordered, Adjudged and Decreed that Arthur J. Eide the plaintiff, do have and recover from the United States of America, the defendant, the sum of Eight Thousand Nine Hundred Seventy and 00/100 Dollars (\$8,970.00), being one hundred and fifty six (156) accrued monthly installments of insurance at the rate of \$57.50 per month beginning January 29, 1919 up to the filing of the above entitled cause on January 19, 1932, less plaintiff's attorney's fees as herein provided.

It is Further Ordered, Adjudged and Decreed that the defendant the United States of America, deduct ten per centum (10%) of the amount of insurance recovered in this action, and pay the same to Alvin Gerlack of San Francisco, California, plaintiff's attorney for his services rendered before this court, payable at the rate of ten per centum (10%) of all back payments and ten per centum (10%) of all future payments which may hereafter become due on account of such insurance, said amounts to be paid by the Veterans Administration, or its successor, if any, to said Alvin Gerlack or his

heirs out of any payments to be made to said Arthur J. Eide or his beneficiary or estate in the event of his death before two hundred and forty (240) of said monthly installments have been paid.

Judgment entered: February 27, 1934.

WALTER B. MALING, Clerk,
By F. M. Lampert,
Deputy Clerk.

Approved as to form:

THOS. C. LYNCH

Assistant United States Attorney.

Receipt of a copy of the within judgment is hereby admitted this 1 day of March, 1934.

H. H. McPIKE

By THOS. C. LYNCH

Attorney for Deft. [8]

[Title of Court and Cause.]

PETITION FOR APPEAL.
ASSIGNMENT OF ERRORS.

The United States of America, defendant in the above-entitled action, by and through H. H. McPike, United States Attorney for the Northern District of California, feeling itself aggrieved by the judgment entered on the 27th day of February, 1934, in the above-entitled proceedings, does hereby appeal from the said judgment to the Circuit Court of Appeals for the Ninth Circuit.

And in connection with its petition for appeal therein and the allowance of the same, assigns the following errors which it avers occurred at the trial of said cause and which were duly excepted to by it and upon which it relies to reverse the judgment herein:

I.

The District Court erred in denying defendant's motion for a non-suit on the ground that no evidence had been brought forth to show the disability on the date alleged in the complaint.

II.

The District Court erred in denying defendant's motion for a directed verdict on the ground that the evidence was insufficient to sustain the allegation of the complaint to [9] the effect that the plaintiff became totally and permanently disabled prior to the date of lapse of his insurance policy.

WHEREFORE, defendant prays that its appeal be allowed, that a transcript of the record of proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, that this assignment of errors be made a part of the record in its cause, and that upon hearing of its appeal, the errors complained of be corrected and the said judgment of February 27, 1934, may be reversed, annulled and held for naught; and further that it may be adjudged and decreed that the said defendant and appellant have the relief prayed

for in its answer and such other relief as may be proper in the premises.

H. H. McPIKE

United States Attorney
Attorney for Defendant and Appellant.

[Endorsed]: Filed May 28, 1934. Walter B. Maling, Clerk.

Service of the within petition for appeal Assignment of Errors by copy admitted this 25 day of May, 1934.

ALVIN GERLACK,
Attorney for Plaintiff. [10]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND THAT NO
SUPERSEDEAS AND/OR COST BOND
BE REQUIRED.

Upon reading the petition for appeal of the defendant and appellant herein, IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore filed and entered herein be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that no bond on this appeal, or supersedeas bond, or bond for costs

or damages shall be required to be given or filed.

Dated: May 25, 1934.

HAROLD LOUDERBACK

United States District Judge.

[Endorsed]: Filed May 28, 1934. Walter B. Mal-
ing, Clerk. [11]

[Title of Court and Cause.]

STIPULATION AND ORDER EXTENDING
TERM WITHIN WHICH TO FILE BILL
OF EXCEPTIONS.

IT IS HEREBY STIPULATED by and between
the parties to the above-entitled action that the
defendant may have to and including the 15th day
of March, 1936, within which to prepare, file and
serve its engrossed bill of exceptions, and

IT IS FURTHER STIPULATED AND
AGREED that for the purpose of preparing,
settling, signing and filing the bill of exceptions in
the said case the October 1933 term of the above-
entitled court within which the judgment therein
was entered and which is extended by and under
the terms of Rule 45 of this Court, be extended to
and into and so as to include the 4th day of April,
1936, thereof.

AL GERLACK,

Attorney for Plaintiff.

UNITED STATES ATTORNEY

Attorney for Defendant.

It is so ordered:

HAROLD LOUDERBACK,
United States District Judge.

Dated: February 27, 1936.

[Endorsed]: Filed Mar. 3, 1936. Walter B.
Maling, Clerk. [12]

[Title of Court and Cause.]

DEFENDANT'S ENGROSSED BILL OF
EXCEPTIONS.

To the Plaintiff above-named and to

Alvin Gerlack, Esq., her Attorney:

You, and each of you, will please take notice that
the attached constitutes defendant's engrossed bill
of exceptions.

H. H. McPIKE,
United States Attorney
Attorney for Defendant.

[Endorsed]: Filed Mar. 14, 1936. Walter B.
Maling, Clerk. [13]

[Title of Court and Cause.]

ENGROSSED BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 23rd day of
February, 1934, the above-entitled cause came on for
trial; Mr. Alvin Gerlack appearing for the plaintiff
and Messrs. H. H. McPike, United States Attorney

for the Northern District of California, Gustav B. Hjelm and Thomas C. Lynch, Assistant United States Attorneys for said district, appearing for defendant; a jury was impaneled and sworn and thereupon the following proceedings took place;

TESTIMONY OF JOSEPH F. HENRETTI,

a witness produced on behalf of the plaintiff, after first being duly sworn, testified as follows:

I have worked for Marsh-McLennan Company since 1929. Previous to that I was with J. B. F. Davis. Arthur J. Eide and I were pals together before the war. We worked together for about four years. Before the war in the years Arthur and I was working for Davis together he was always very studious and energetic in his work there and put in a lot of time and was very ambitious. He did insurance work, underwriting. He was very neat, always neat in his appearance. I worked in the same department with him. He got along very good with his work. [14] After the war I saw him either July or August of 1919, I am not sure of the time because it was the fifth of July I think when I was discharged. I met him downtown and I asked him what he was doing. He said he was doing some clerical work for the S. P. and I asked him why he didn't come back to Davis' and he said "I don't want to work over there any more". He said "What are you working up there for?" I said, "That is a good chance." He said, "Oh, I don't care to work." He seemed different and I was out with him a few

(Testimony of Joseph F. Henretti.)

times after that and gradually I got away from him because I didn't know what the trouble was, whether he was sore at me for no reason at all, but he just seemed different. Before the war we were always on good terms. In fact I wrote to him when he was in North Carolina. He was very sociable before and he had a way of thinking everybody was against him and he didn't seem the same. Afterwards he seemed—he didn't care much about working and he would only take—he would work in one place a short time and the next time I would see him he would be working some place else. I think he worked for a supply house a while and lasted there for two weeks or a month. I asked him what the trouble was when I met him and he said oh, they gave him a dirty deal and that was all there was to it. But he seemed so changed that I gradually drifted away from him until we went in the garage business and at the time I went out to get some gas one night—this was quite a while afterward—he filled the gas tank up and left the top off and wouldn't take any money. I said, "Go on, take the money", and I laid the money down there and he left it there and I had to put the top on the gas tank and I didn't know whether he had it in for me or not, what caused it. In 1919 he didn't seem the same as he did before. Now this garage incident was around 1923. I would say at that time that he acted irrational. In 1919 he looked [15] physically all right but he seemed to have a different attitude.

(Testimony of Joseph F. Henretti.)

He was indifferent to me and would ignore me at times. He didn't keep himself as neat as he did previous to the war [16] and he didn't seem to care much about his personal appearance. From 1919 up until 1923 I have seen him off and on for maybe ten or twelve times but I could not say whether he appeared rational or irrational. He complained of headaches many times before the garage incident. In 1919 I noticed that he was nervous. When I was out to the garage he had a kind of stare. I didn't notice it in 1919. He was not nervous like that before the war.

A. Yes. Well, he was ambitious before the war and, of course, after the war he drifted from one job to another.

The COURT: That is your conclusion to say that he wasn't ambitious because he drifted.

He wasn't happy after the war. He was altogether different. He was always happy before.

Cross Examination.

Before the war we used to box together once in a while. He used to be a ball player. I think he played ball a little bit when he came back from the service here in San Francisco and I think he played up around Dunsmuir. During the period between 1919, when I first came back from the war, and 1923, when I saw him in the garage, I saw him perhaps ten or twelve times, maybe more.

TESTIMONY OF WILLIAM ROMAINE.

William Romaine, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

I am associated with Marsh-McLennan, J. B. F. Davis & Company, and have been with them for over forty years. I was office manager with J. B. F. Davis & Son Company from 1907 to 1929. I know Arthur J. Eide in a business way. He came to work for us in November, 1912, and he left on December 12, 1917, to go to war. Between 1912 and 1917 I saw Mr. Eide every working day practically all the time he was there. I [17] had charge of the whole office. I knew him very well, came in contact with him, keeping records of attendance and absence and earnings and so forth. During this period I think he had a very happy appearance, was a very efficient clerk, did his work well, and to all appearances was a perfectly normal individual. He was continuously employed from 1912 to 1917. As to my recollection, Mr. Eide came back to the office immediately after the war. I think it was 1919 but I couldn't give you the month or date. He appeared changed at that time. He simply came into the office and talked to the different boys and he was [18] very friendly with different ones, most of the firm and myself around the office, and he was offered his old position if he wished to accept it. I offered that to him personally. His reaction was that he was indifferent and a different man entirely. He didn't seem the

(Testimony of William Romaine.)

same happy sort of an individual and he was indifferent about accepting reemployment. In fact he was changed so much that I asked Mr. Henretti, who was one of Mr. Eide's associates if he knew what was the matter. I saw him one time after that when he was in the garage business and he was just about the same.

Cross Examination.

Before the war Mr. Eide was in the Fire Department. He was doing clerical work, examining policies. He was getting \$85 a month when he left us.

TESTIMONY OF ARTHUR F. HAMMER.

Arthur F. Hammer, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

I am a restaurant proprietor at 115 Sixth Street, San Francisco, California. I have known Arthur J. Eide for the last twenty-five years or so. I used to play ball with him before he went in the army. He appeared physically fine and I never observed anything wrong with him mentally before he went to war. After he came back I was in partnership with him in the garage business on Divisadero Street San Francisco. This was about 1921, 1922 or 1923, I think. I think it was November of 1922. We were in partnership I would say about six months. I came to the conclusion Mr. Eide must be crazy, at

(Testimony of Arthur F. Hammer.)

the time I had the garage. After I found we were losing business and there must be something wrong so I had to get out of the business and go back to the restaurant business. When I had the garage in 1923 I had several occasions to watch him while he was waiting on customers [19] and I noticed unusual things about his conduct. At times he would be standing at the gasoline pump staring into space for maybe half an hour at a time. I would be working on cars at the back of the garage and I would come up and ask him what was the trouble. He would be just looking into space and wouldn't listen to what I said. It seemed to me as though he wouldn't listen to anything. He would complain about his head aching him. I don't know how much money Mr. Eide drew out of the business and I don't know whether he was subsequently employed. After the garage venture I also saw him in 1919. He came in to eat in the place of business and I would just talk casually to him. I noticed he wasn't exactly the same man he was before the war. I think it was in 1919 that I saw him. I saw him frequently after we dissolved the partnership in the garage. He would come into my restaurant at Sixth and Mission Streets, San Francisco. I know one time he came down there with a Morris Contract to have me sign. He wanted to borrow money to build an invention that he had in view and I passed it off. About every half hour he would come in with that

(Testimony of Arthur F. Hammer.)

same contract and want me to sign it. He came in about five or six times. Of course I didn't sign it. He wouldn't look you in the face. He would look down and sort of hold the contract in front of me and seemed to be in a hurry to go places. I also noticed that he always seemed to think people were talking against him. He always thought there was somebody was not pulling for him. I noticed this attitude a little before I went into the garage business but didn't pay much attention to it. It was after I went in the business with him that time that I found it. When I first saw him in September of 1919 he seemed kind of distant, didn't seem to have the same manner about him. He seemed to have a far away look, seemed to be looking into blank space. This was different from the way he appeared before the war. After the garage business he [20] would come into the restaurant to eat. He would sit up at the counter to have meals and when the girl put it down in front of him he would stand there and look at it, look into space. I would have to go up and ask him what was the matter. He wouldn't evidently hear me. I would have to shake him and then he would kind of wake up and start to eat. His meal would be sitting in front of him sometimes maybe five, ten or fifteen minutes before he would start it after I had gone up and talked to him. Then he would kind of watch. He would eat and then lay down his knife and fork and kind of look into space some more, maybe sometimes three-quarters of an hour, before he would go out and sometimes he

(Testimony of Arthur F. Hammer.)

would get up and walk out and come back in again. Before I was in the garage business he used to come in the restaurant and he would seem kind of strange but I didn't pay any attention to it. Before the war he was always pleasant, always jolly, laughing, able to carry on a conversation. After he wasn't very cordial, seemed to be distant.

Cross Examination.

Prior to the time I went into partnership with him I had not paid any attention to anything queer or strange about him. That is, I came in contact with so many people and people act queer at certain times and I felt as though probably the war made some kind of a change over him. That is the reason why I didn't pay much attention to that. He acted a little strange but I didn't consider it of any moment at that time. The affidavit which you have shown me refreshes my recollection as to the time I went into the garage business with Mr. Eide. It was in August, 1923. I wouldn't say that prior to August 1923 I did not take notice of anything strange or queer or irrational in the plaintiff and his actions. It was about two months after I entered into the partnership with him that I first noticed that Mr. [21] Eide was losing interest in the business and his work, and it was about this time that I first noticed he would stand looking at customers and refuse to provide them with gasoline or oil.

DEPOSITION OF FRANK A. BARRETT.

The deposition of Frank A. Barrett, a witness for the plaintiff, was read in evidence and the same reads as follows:

My name is Frank A. Barrett. I am thirty-seven years old, residing at Lusk, Wyoming. I am an attorney. I first met Arthur Eide in the service at the Balloon School, Fort Omaha, Nebraska, in the summer of 1918. I should say about July 1st. He was a sergeant, first class, Sixtieth Balloon Company of the Air Service. We were members of the same company and I was with him until the middle of January, 1919. While I was acquainted with Mr. Eide he got sick with the influenza during the epidemic. As near as I can recollect it was in September or October of 1918. At that time we were stationed at Florence Field, Fort Omaha. We were quartered in tents which were heated by the usual Sibley stoves and the weather was chilly fall weather. Mr. Eide was removed from our company and sent to the hospital. I should say he was away about one month. Mr. Eide and I have slept in the same tent together for several months prior to his sickness and we worked together all of the time. Before he became sick his health was A number one and after he returned he was in bad health and did not have the pep that he had prior to his sickness and he seemed worried and sickly. After he returned he complained continually of severe headaches and pain in the back of his head. It was difficult to get him out of bed as he would rather

(Deposition of Frank A. Barrett.)

stay in the barracks and rest and sleep and complained of headaches; acted rather [22] sluggish and drowsy. I noticed that he would lay in bed at every opportunity; whereas before he was always on the go; rather extremely lively sort of fellow. Also he did not perform his work as he had before and it was necessary to perform some of his duties for him. After Mr. Eide returned from the hospital, the Company was sent to establish a camp of its own about twenty miles north of Florence Field. The weather there was extremely cold and it rained practically all of the time we were there, and this condition of the weather was much harder on Sergeant Eide than on the rest of us, because of his sickness. Eide was able to "get by" because the rest of us fellows handled the heavy work. At the time I was discharged I noticed that his health had not improved. He was still rather dull and sickly at that time. He still remained in bed as much as possible and complained of headaches and pains in the back of his head.

Cross Examination.

As a matter of fact Mr. Eide did not complain, but only upon insistent inquiry would he tell us what the trouble was, and it was in answer to our inquiries he would tell us that he had these headaches. As I recollect it now they appeared to be continuous. He had them practically all of the time. I do not believe he reported on sick call

(Deposition of Frank A. Barrett.)

after he came back from the hospital. If he did, it was rather seldom. I did not suggest to him that he should report on sick call because after the war was over it was unnecessary to report on sick call to be relieved from duty. Eide returned from the hospital in the fall of the year, towards the latter part of October. I am not sure that I saw him the first day he returned but I remember that he was placed on duty immediately. When he returned from the flu, he took it easy for [23] some time. This was not under anyone's particular direction, but for the reason that when there was any work to do the sergeants would divide the work up themselves. I do not recall ever hearing the captain of our company telling Mr. Eide to take it easy for a while until he felt his strength come back, although I did hear him tell a large number of others. During the first week of Mr. Eide's return from the hospital I saw him eighteen out of twenty-four hours. He was stationed right with me and most of the time he was laying around and loafing on his bunk. If there was any work to perform the officers would direct the first sergeant to designate one of us fellows to take the company out and generally we would volunteer to do that and leave Eide to take it easy. My best recollection is that he spent nearly all of his time in the tent during the first week, except to go about fifty yards for mess. I rather think he went to his meals regularly. This condition changed very shortly after-

(Deposition of Frank A. Barrett.)

wards and he did more work and did a fair share of his work. I was not present when Sergeant Eide was taken sick, nor do I know what symptoms he had. About all I know is that he was taken to the hospital. Afterward I perceived that he had slowed up considerably since his sickness and that he was lifeless and did not have the "pep" and spirit that he had prior to his sickness. He refused to go out to entertainments and parties as he had theretofore and gave as his reason the headache complaint. He would go out occasionally, but not nearly as much as before, but he complained continuously of the headaches until my discharge. I think the weather was harder on him because I was a fairly strong and robust man at that time and he had been sick recently, and the dark, gloomy, cold rainy weather seemed to depress him more than it did the rest of us. This rainy period lasted for about a week. [24] We were then removed to Fort Crook and placed in barracks. He seemed to improve then but did not get in any happier frame of mind. He took it much easier until discharge. He looked all right except that he had lost some weight and did not have the life and "pep" that he had prior to getting sick. In our company I would say that one hundred out of one hundred and fifty or one hundred and sixty men were sent to the hospital with the flu. About fifty died and about fifty returned. Those that returned underwent the same changes as Mr. Eide in so far as they had

(Deposition of Frank A. Barrett.)

to take it easy for a short time after their return from the hospital, but I did not have the occasion to learn of any followup trouble such as headaches from the other men for the reason that I was continuously quartered with Sergeant Eide in the same tent and in that manner learned of his particular trouble. My best recollection is that Mr. Eide was away a month. As far as I recall the method employed in making a sick report in our company was as follows: I have a hazy recollection. If a man complained to the sergeant on duty or any other officers on duty relative to any sickness, then this man was immediately placed on the sick report. He was sent to the company doctor and taken care of. I do not know of any other sickness Sergeant Eide had prior to the time he left the company on the first occasion.

Redirect Examination.

When Mr. Eide left the company, his health as I observed it, was A number one, when he came back it was very poor. I do not recall that he ever complained to me about double vision or seeing double.

TESTIMONY OF MRS. BERTHA K. EIDE,
a witness produced on behalf of the plaintiff, after
first being sworn, testified as follows: [25]

I am the mother and legal guardian of Arthur J. Eide, the plaintiff in this case. My son at the

(Testimony of Mrs. Bertha K. Eide.)

present time is at the Stockton State Hospital, Stockton, California. He was living with me at the time he went to war at No. 1700 McAllister Street, San Francisco, and was working at that time at Davis', the broker's office. He had been working there for four or five years. Before he went away he appeared to be a jolly boy, good natured, seemed he always took everything so good natured, was always jolly and took me out. He appeared very neat. He always had his clothes in good order and his shoes, and was very particular about his presence. I saw Arthur when he returned from the war in January 1919. This was in the first part of January and four or five weeks before he was actually discharged. He had to stay in the Presidio on account of flu. The first time that I saw him he had no expression at all. He looked so different and I says: "Arthur, what's the matter with you?" "Oh", he says, "I left some men down on Market Street", he says, "I have to hurry." He stayed home that time about five or ten minutes. When he came home again he seemed so quiet and said he had headaches. He didn't tell me that the back of his head hurt but he had to go to bed a couple of days at a time and I put water on his head. This was right after he was discharged. Then they got worse all the time and I tried to doctor him up. I thought it was just ordinary headaches, you know, and I put wet towels on his head and tried to do the best I could for him. He had these headaches when he first came back

(Testimony of Mrs. Bertha K. Eide.)

and he had them for three or four years, maybe more than that, really hard headaches. He lived with me when he was discharged until I put him into Palo Alto in 1927. I noticed a fixed stare on his face when he first came home he wasn't the same and he wanted to be by himself. He didn't want to go to see any friends and he was altogether [26] different. He appears to me now to be just the same. I do not think he is crazy, I think he is nervous. I never thought he was crazy and I do not think so now.

Q. You remember when he tried to work for the Southern Pacific up in Dunsmuir?

A. He worked off and on and he come home between times, odd jobs.

Q. How did he appear when you say him when he came home?

A. Oh, he was nervous just the same, just about the same all the time.

I remember when he had the garage. When he went away to war he was jolly and had a good hope for the future and when he came back he didn't think anything about the future, didn't have any expression on his face. He was nervous. If I said anything to him why he—the tears would come in his eyes. He was depressed. I don't know how many jobs he had from the time he came back from the service until he entered the hospital in 1927. In 1919 he went one week at the garage and he was fired out of that and the next thing he was at another garage for about three months. He was

(Testimony of Mrs. Bertha K. Eide.)

night watchman at the garage. He quit because he had severe headaches during all of the time. He had headaches all the time when he was at Dunsmuir but he was a boy who never complained very much, but he just went to bed and just stayed there like a dead person. When I first took him to Palo Alto he was so nervous he couldn't hold a book in his hand, you know, it just dropped out of his hand while he was reading.

(Insurance Policy Certificate number 1841792 introduced in evidence and marked "Plaintiff's Exhibit No. 1" in evidence.)

When Arthur worked in the garage he appeared just about the same, he was very nervous, headaches, and night sweats.

Q. Did you ever try to treat him for any of these things? [27]

A. Well, I treat him like I did, you know, like we used to home made treatment. He was just the same all the time.

Cross Examination

I don't see any difference in Arthur's condition now than it was when he got out of the service. He is very nervous. He couldn't work anywhere and I know it because he tried it after I—Oh I don't know what year it was that he was a night watchman in a place on Market Street and after that he got sick in bed for a long time. When he came out of the Army he went to work at Sansome Street, I think it was, in a garage, 55 Sansome Street. The Mer-

(Testimony of Mrs. Bertha K. Eide.)

chants' Garage. He worked there one week and was fired. Then he didn't do any work for oh, for a whole year, and the next year he got work at Terminal Garage and he was there about three months. That was in 1920. He didn't do anything else in the meantime beside work at the Merchants' Garage and the Terminal Garage.

Q. Did he ever work in Vallejo?

A. Oh, he worked in Vallejo, yes, after that.

Q. As a matter of fact wasn't that in the early part of 1919 as soon as he got out of the Army?

A. Well, maybe I am mistaken. Maybe it was but I know he worked over there for about four or five weeks. It was not three months. I am quite sure it wasn't that long. He also worked up in Reno for the Sierra Auto Company in 1919. I know it was right after he came home from the war but what date it was or what month or year I can't remember. He got a job up there but he came back in a couple of weeks.

Q. As a matter of fact didn't he work for the Sierra Auto Company in Reno from May, 1919, until July of 1919?

A. Oh, no, he wasn't up there that long. [28] He played a little bit of baseball but that wasn't his work all the time.

Q. Wasn't he paid twenty dollars a game for playing baseball?

A. I have heard fifteen but I don't know if it is so or not. I don't know whether he played every weekend.

(Testimony of Mrs. Bertha K. Eide.)

Q. Mrs. Eide, as a matter of fact didn't he first work for the U. S. Housing Commission at Vallejo, then for Sierra Auto Company and then for the Merchants Garage and in the meantime play baseball up at Dunsmuir and Yreka?

A. Well, I can't tell just exactly what dates but I know it was right after he came out of the war that he was up at Vallejo.

Q. As a matter of fact didn't Arthur return from Reno in December of 1919 and go to work for the Merchants Garage in San Francisco in January of 1920?

A. I can't remember exactly the date, you know, but I know I went to see him when he was in the Merchants Garage so I know he was there for one week and then he was discharged.

Q. Did he ever work at Angel Island. He worked one week at the Merchants Garage.

A. One week.

Q. Was he discharged?

A. Yes.

Q. Why?

A. I suppose he had headaches and couldn't do it.

Q. He worked there for one week. You are sure of that?

A. Yes.

Q. You are sure he was discharged?

A. Yes.

Q. Because he had headaches?

(Testimony of Mrs. Bertha K. Eide.)

A. Yes. He told me he was discharged and I went down to see him once, to see how he got along so I know where it was. [29]

It was somewhere down on Natoma Street. I don't remember seeing Mr. Bogel down there, nor Mr. Levinson. I don't know why he left Angel Island. I suppose he had headaches. He worked at Dunsmuir and Yreka for the Southern Pacific Company a couple of years off and on on odd jobs. By that I mean that any time they needed him why he could get in. He was working in the Round House.

Q. As a matter of fact he was working as a fireman, wasn't he.

A. Well, maybe he got in that a while, I know, but that is the first he worked in the shop because he told me he was going up there, he just got a little job off and on, just extra.

I don't know how much money he was making up there.

Q. When he was working in the garage business—When did he go in the garage business with Mr. Hammer and Mr. Richardson?

A. 1922 and 1923, I think it was.

Q. Was he making money?

A. No.

Q. Was he giving you any money?

A. He gave me as much as he could because he lived home.

Q. How much was he giving you?

A. Well, I don't know just about, you know, how much.

(Testimony of Mrs. Bertha K. Eide.)

Q. Was he paying you sixty dollars a month?

A. Yes. That is what he was paying me when he could, you know.

Q. That was in 1923?

A. Yes, 1922 and 1923, I don't know which.

Q. Do you think at that time he was in the same condition that he is in now?

A. Yes, I think he is just the same as when he came out of the Army. I can't believe anything else. He is very nervous [30] and has been since he came out.

Q. For how long a period of time while he was in the garage business did he continue paying you sixty dollars a month?

A. Well, I can't just remember that because that was—He was supposed, you know, to give me—to help me, you know.

Q. And he did, didn't he?

A. Yes, he did all he could.

Q. Was he fairly regular?

A. Yes, he was very good, was very good that way. I never need to ask him. He was good hearted.

Q. As a matter of fact, he was working fairly steady up until 1923, he had various jobs, U. S. Housing Commission, Sierra Auto Company, Merchants Garage, United States Immigration Service, Southern Pacific Company, and then in his own garage business.

A. Well, he didn't stay with it very long.

Q. How long did he stay with the Southern Pacific?

(Testimony of Mrs. Bertha K. Eide.)

A. Up in Dunsmuir, you mean?

Q. Yes.

A. I think he said it was a couple of years but it was just off and on, he didn't get in any time, you know, he didn't work but just odd jobs.

I don't know how much money he was making from the Southern Pacific. When he was working for the J. B. F. Davis Company he was making eighty-five dollars a month. He had been there four or five years. He enlisted in the Army direct from the Davis Co.

TESTIMONY OF LUCIA MARTIN,

a witness produced on behalf of the plaintiff, after first being sworn, testified as follows:

I worked for J. B. F. Davis & Son from January, 1914, to April 1929. I first met Arthur J. Eide at J. B. F. Davis [31] & Son in 1914. I knew him very well. I worked very close to Mr. Eide. He helped me with my work and I went out to dinner with him on numerous occasions and the theatre on numerous occasions and out dancing. He was at all times a very cheerful person. He was more than the average in his neatness, immaculate in his appearance, and I could depend on him at all times to help me with my work. He was in the Fire Department and I was in the Fire Department. I would say that he was an intimate friend. Mr. Eide worked steadily, that is, every day there was work to be done. I first saw him after the war in the early spring of 1919. I would

(Testimony of Lucia Martin.)

say in February or March. I spoke to him at that time about fifteen or twenty minutes. He appeared irrational to me. I asked him if his position had been offered to him. He said it had. I said: "Are you going to take it?" He said "No", he wasn't interested in it, it gave him terrible headaches to work and didn't pay to work for other people anyway, you never got anywhere. When I saw him he was rather unkempt in his appearance. He didn't seem to be interested in my conversation. He just stood there and had a fixed stare on his face. He just stared straight ahead of him. There wasn't any expression on his face no matter what I said. He wouldn't smile or laugh. I tried to bring up things we used to talk about and used to be interested in. He just didn't acknowledge them at all, apparently almost to the point of rudeness. He appeared to me to be irrational. So much so that I was really shocked and mentioned it to several of the boys in the office afterward. The next time I saw him was in the garage on Divisadero Street. While he was at Davis' we had often laughed about the time when I would buy a car. He said he would take care of it. I learned through one of the boys in the office he was in this garage on Divisadero [32] Street. I thought if I took it to a person who knew me they would service it correctly. I was in there in the morning on my way to work with the car. He acted as though he had never seen me before. He just stood there and stared off into the corner, never answered me, never spoke to me. Finally I left and

(Testimony of Lucia Martin.)

I worried very much all day about that car, it was a new car and my first car. So when I left the office at five o'clock I thought I would go out and pick up my car. When I got to the corner of Sansome and Pine there was a car standing out almost toward the middle of the street looking very much like my car. I went up and saw it was my license number, my car, with keys in it, and the engine running. It hadn't been cleaned or washed or hadn't been greased, nothing done to it and there wasn't anyone around. Mr. Eide never made any explanation for this. I never saw him again but in 1932 I received two letters from him. I have those letters with me.

(Letters produced by the witness, identified, offered and marked in evidence as "Plaintiff's exhibits Nos. 2 and 3).)

I corresponded with Mr. Eide while he was in the service, wrote to him probably once a month or once every six weeks. The last letter that I got from him in the service was a very friendly letter thanking me for a box of homemade candy I had sent him. I received no further letters up until the time I received the two letters which have been just offered in evidence.

Cross Examination

I saw Mr. Eide in 1919 and I would say that he was irrational.

Q. What do you mean by irrational? [33]

A. Well, a person you would know very well, were friendly with, who had always been so cour-

(Testimony of Lucia Martin.)

teous to you should suddenly come in and try not to speak to you, just stand there and stare into space no matter how hard you tried to get his attention in conversation, refuse to talk to you. He was almost rude in his inattention and indifference. That I call irrational.

I did not attribute his conduct to the fact that he wasn't interested in me any more because I was not [34] engaged to him at any time. I didn't go with him to the exclusion of other young men, or he didn't go with me. It was just a friendship. On the day that I saw him I was in his company for fifteen or twenty minutes. At that time he was offered his old position, they offered the boys who came back from the war their positions back in our office and he was offered his back. I wouldn't have offered him a position. I formed the opinion then that he was insane. I took my car to him later as I heard he was in the garage business. I felt sorry for him. I thought if he had pulled himself together, now that he could get in this garage I would help him out. He wasn't friendly there. He wasn't pleasant or courteous. He stood there and stared, a fixed stare on his face. This alone didn't cause me to think he was insane.

Q. The fact he was rude didn't cause you to think he was insane, did it?

A. No.

Q. But he stared.

A. Yes.

(Testimony of Lucia Martin.)

Q. What else did he do beside staring?

A. He kept staring first one way and then another way as though someone were after him and he wanted to bolt out of the place.

Q. What else?

A. Well, the manner of answering me, his answers.

Q. Give me the questions and the answers.

A. Well, I said: "Arthur, are you going to take your position back? No. Why not? Gives me headaches to work. There is no use in working for people anyway, you never get anywhere anyway."

Q. Now, let's take that then. You asked him "Are you going to go to work? No. What is the use of working, don't get you [35] anywhere anyway." That didn't cause you to think he was insane?

A. Yes, it did, and having known him before.

Q. That is what caused you to think he was irrational together with staring?

A. Yes.

My definition of irrational is a person who doesn't act in a sane, sensible, rational manner. I said that Mr. Eide was not sane because I have never had anybody come and stand and stare and act as though they wanted to bolt away when I am trying to talk to them, act as though somebody were after them. He acted offish toward me and there was a marked difference in his personal attitude. I also noted that he kind of stared and looked around and so forth. He could not carry on a conversation with me. I

(Testimony of Lucia Martin.)

tried my level best. He answered me abruptly. He seemed to have lost interest in me and in the work and in everything.

Q. Now, if you would make the acquaintance of a gentleman and you would be friendly and after a matter of two years would go by and you would meet him and he would be abrupt, indifferent, cold, rude, improvident instead of looking at you and being interested in your talk, would be looking at someone else, would you under those circumstances come to the conclusion that such person would be insane?

A. Well, there are different ways——

Q. (Interposing): Answer yes or no.

A. The way you have described it I would say no.

Q. You would say no.

A. Yes.

Q. You would not come to the conclusion he was insane?

A. No.

Q. Have I described all the things you observed that day? [36]

A. No.

Q. What else was there?

A. It wasn't just a coldness or rudeness or indifference, it was an expressionless stare, a mask-like face, a face without an expression like an insane person.

Q. Let's include that information as we refer to this imaginary man, say he would have a blank ap-

(Testimony of Lucia Martin.)

pearance on his face, a harried expression and a blank stare. Would you then say such person or man is insane?

A. Yes, I would.

I would describe Mr. Eide's look as vacant and shift. I have not seen him during the last three years. The last time I saw him was when he was in that garage on Divisadero Street. That morning when I took my car there I tried very hard to talk to him. His appearance was just the same. He was just as hazy one time as he was at the other time. I certainly would not have employed him in my service in the Fire Insurance.

DEPOSITION OF DR. R. L. RICHARDS.

The deposition of Dr. R. L. Richards, a witness for the plaintiff, was read in evidence and the same reads as follows:

My name is Dr. R. L. Richards. I reside at No. 40 San Ysidro Lane, Santa Barbara, California. I am licensed to practice medicine in the States of California and Ohio. I graduated from the University of Cincinnati in 1894. From 1902 to 1912 I served as a medical officer in the United States Army. I resigned in 1912 and became medical superintendent of the Mendocino State Hospital and remained in that capacity until 1921. This hospital is also known as the California State Hospital for

(Deposition of Dr. R. L. Richards.)

the insane. In addition to [37] this, while I am not sure of the date, I was consultant of the Marine Hospital Public Health Service for a good many years, beginning, I should think, about 1922 I was Consultant of the Veterans Bureau Twelfth District. I have not been active in that work since 1927. My specialty is psychiatry, that is, nervous and mental diseases, and I have followed this specialty since 1909. I am practicing at the present time here in Santa Barbara, California.

I examined Arthur J. Eide professionally on May 16, 1929, when his mother brought him to me and I examined him and gave advice as to treatment. From the nervous and mental troubles, his family history, his personal history, present condition, examination, diagnosis and treatment, I found that Eide was definitely mentally sick; by that I mean that he was suffering from neuropsychiatric disease. He was a case of dementia-*praecox* and treatment was followed up at the hospital. Mrs. Eide gave me a history, however, of influenza in 1918, disability following that associated with excessive sleepiness, attacks of dizziness, lack of initiative and inability to hold a job. That this had varied in different years; that at some times he was worse but never better and I found him to be a man very difficult to arouse. He answered questions not at all or after considerable delay but when once stimulated he answered promptly and quickly and seemed to be interested in making a

(Deposition of Dr. R. L. Richards.)

correct answer. He was not apathetic, he had no peculiar mannerisms which are characteristic of dementia-*praecox* cases of the duration that he said his was. My impression was that the man had had an acute infectious attack in 1918, that it might have been and probably was encephalitis *lethargica*. It would not preclude the dementia-*praecox*-like symptoms which he had at the time that I saw him. He did not show negative tendency to do the opposite thing. I didn't find at [38] the time any motor weakness which you often find, I mean a slight paralysis which you find at times with encephalitis. The deduction from that was that the cortex had suffered more than the lower centers of the nervous system. The cortex is the thinking part, the outside of the brain.

Q. (By Mr. GERLACK): Doctor, I will give you this definition of permanent total disability. Total disability is to find there is an impairment of mind or body that prevents the disabled person from following continuously any substantial gainful occupation and total disability shall be deemed to be permanent whenever it is founded upon conditions that render it reasonably certain to last throughout the life time of the disabled person. Bearing in mind that definition, I will ask you first, whether in the purview of that definition, you have an opinion, first, as to whether or not Arthur J. Eide at the time you examined him as you have

(Deposition of Dr. R. L. Richards.)

testified here, was permanently and totally disabled within that definition?

A. I have an opinion.

Q. What is your opinion?

A. That he is permanently and totally disabled.

Q. That he was at the time you examined him?

A. He was at the time I examined him, yes.

Cross Examination

The first time I ever saw Mr. Eide was when his mother brought him to me on May 16, 1929. Most of the history I obtained from his mother. She said it was based on her knowledge. I can't tell you at this time how much of the history she gave me, but in general I should say three-fourths at least came from the mother. It was very hard to stimulate the man. My recollection is that Mr. Eide told me the way he felt and certain of his occupational record, confirmation of [39] the time of enlistment and time of discharge. I described his ailment as dementia praecox. I said a good deal about the dementia praecox and certain peculiar things about it which made me wonder whether it was a straight dementia praecox or due to infection. By dementia praecox I mean a mental disease which usually occurs relatively early in life and therefore is precocious and generally continues to a dementia which may last for years after the beginning of it. That is associated with many symptoms. There is a withdrawal from contact with the surroundings, there are oddities and peculiarities of conduct, at times

(Deposition of Dr. R. L. Richards.)

there are hallucitory and delusional manifestations and usually if you are not dealing with an acute infectious organism, you find a steady sort of a progress without fluctuation to a degree that this case seemed to show. That was the thing that struck me, he was not apathetic, he was interested in what was happening but he would sit without saying anything until you asked him in a loud tone of voice or insisted upon an answer, at which time he answered correctly and quickly and during that period seemed interested. There was no negativism or tendency to do the opposite thing from the thing which you asked him. He had nothing of the peculiar rhythmic movement of the hands which often happens with them.

My examination consisted in examining the cranial nerves, the reflexes, what is usually meant by physical examination, the question of heart and lungs, muscular power, his contact with surroundings, any evidence of false sense perception or delusional trend, his recollection of things, his apparent mental capacity at the time. I found that the reflex actions were normal. His heart and lungs appeared to be normal, he seemed to have a fairly high blood pressure, 160 over 110 at that time. He did not appear to be normal, [40] more from the mental angle probably than from the physical, I mean the man's indifference, the difficulty in contacting him. The main thing that I found that was particularly noticeable physically was the high blood pressure. I found no motor paralysis. The

(Deposition of Dr. R. L. Richards.)

difficulty, as I said before, was a cortical function rather than peripheral. There was a small part of the history that I could get from him. I didn't say that he was inaccurate or had memory defect in what he told me but it was very difficult to get him to answer a question.

Q. Was it a question that you could not get it from him or was it a question that the mother being there took the lead in telling you the history?

A. It wasn't the presence of his mother because I learned to exclude her.

Q. Did you exclude her in the beginning?

A. I don't mean exclude her from the room but I went direct to the man, tapped him on the back and spoke to him more loudly and demanded an answer from him disregarding the mother.

I have no way of knowing how long he had been in this condition except from what was told me. But I was impressed more with the question that even if they had been trying to deceive me, they gave a history that connected and seemed logical from beginning to end and I didn't think they knew enough about medicine to do so.

Q. But, Doctor, isn't this a fact, that one who has formerly held jobs steadily and with satisfaction and later drifts into the habit of being unable to hold a position, isn't that brought about sometimes by association as often as it is by anything else?

A. I don't look at it from that angle, I am much more individualistic than that. A person is a definite something to me, he has functioned in a certain way

(Deposition of Dr. R. L. Richards.)

prior to a time and particularly if he has gone up to the age of twenty-four before he [41] enlisted, he is pretty well formed. If after discharge he should happen to go with Tom, Dick and Harry and sit around with veterans of the foreign war, I should think there was a basis for it, it would take more evidence of it, at least that was our experience at the time of the war, I had charge of the West Coast and I saw a lot of that. I wouldn't think the man was contaminated by association, no, in this particular case.

Q. Now, you would not be able to say, Doctor, whether this condition was brought about by influenza or not, would you?

A. I could only say that it would be brought about by that. I realize that I have not all the information, if that is what you mean.

Q. That condition that you found this patient in isn't a frequent result of influenza at all, is it?

A. It isn't an infrequent result and it is a well known fact that you do have that sort of a condition following the influenza.

Q. You could likewise have it in many cases of people who have never had influenza?

A. That is quite true.

Q. And you would have it in many instances where there is no history of any previous sickness?

A. Quite true.

STIPULATION

(Mr. GERLACK): If your Honor please, for the purpose of the record I have agreed to stipulate with Mr. Lynch—Mr. Lynch and I can agree upon certain of the pleadings that we haven't heretofore discussed. It is admitted, Paragraph 1 is admitted that at the time suit was commenced he was a resident of Siskiyou County in the northern district.

The COURT: You admit Paragraph 1? [42]

Mr. LYNCH: Yes, admit Paragraph 1.

Mr. GERLACK: Paragraph 2.

Mr. LYNCH: Admit Paragraph 2.

Mr. GERLACK: Paragraph 3.

Mr. LYNCH: Admit Paragraph 3.

Mr. GERLACK: Admit Paragraph 4, that he had the policy and it was in full force and effect up to and including midnight of July 1, 1919.

Mr. LYNCH: Yes. We admit Paragraph 5.

Mr. LYNCH: Deny Paragraphs 5 and 6.

Mr. GERLACK: You admit that claim for insurance was made on April 22, 1929, and that disagreement was made by the Veterans' Bureau on June 29, 1932?

Mr. LYNCH: Yes.

TESTIMONY OF DR. FRED J. CONZELMANN, a witness produced on behalf of the plaintiff, after first being sworn, testified as follows:

I have been in the psychiatric practice or study of mental and nervous diseases since 1912. I am a graduate of Michigan University and Ann Arbor

(Testimony of Dr. Fred J. Conzelmann.)

Medical School. I graduated in 1905 and then I was five years in the Army as a lieutenant and then I left the Army and went into civil work. I have been since 1916 at Stockton State Hospital except for eight months that I was at Camp Kearney in the service during the war. My specialty is neuropsychiatry and the treatment of mental and nervous diseases. I am at the present time employed by the State of California on the staff at the Stockton State Hospital for the Insane. I am the ward surgeon of Mr. Eide. He was admitted June 4, 1932, and he has always been on my ward and he was out from September 29, 1932, to January 9, 1933, and since then he has been back for over a year, [43] always on my ward. I see him nearly every day. His present diagnosis is dementia praecox, paranoid type. This is a disease of the adult. Science has not discovered the cause of the disease. Its usual course is very gradual, extending over months or years before it fully develops and there is usually an oddity of conduct, rudeness and explosive episodes, feeling that he is discriminated against or people are against him, and then they develop ideas that people are actually persecuting them or getting them out of jobs, very likely to change jobs suddenly without any particular cause. We find it has just been their own idea that somebody is having it in for them, and then as they go on and develop various ideas. Very often they have grand ideas that they have great wealth or they can have an invention and they can communicate through the

(Testimony of Dr. Fred J. Conzelmann.)

air with chemical substances, don't need a radio or telephone to talk distance and some have ideas they are God or Christ or John the Baptist or Mary, the Virgin Mary. Some of their inventions, usually something impossible about it, and then they have often mind influences and thought feeling or thought reading and the like. Mr. Eide tells us that he hears voices out of the air, they call him very bad names, so bad sometimes he doesn't want to repeat them, and frequently states he can communicate with the Government just by shouting out loudly and he has these explosive episodes and he sometimes suddenly gets up from the chair, runs up to the wall and kicks it and then runs away from the wall and always asks about when he is to be let out, he is not insane, that people are jealous of his inventions.

Q. Doctor, have you seen Plaintiff's Exhibits 2 and 3 here?

A. Yes.

Q. Have you also seen Mr. Eide drawing like that?

A. Yes, he has at various times. He has made certain draw- [44] ings at the hospital that he says is an invention.

He has not invented anything that we have ever found out.

Mr. GERLACK: If your Honor please, I offer in evidence at this time the definition of permanent and total disability.

The COURT: Received as No. 4 for the plaintiff.

(Testimony of Dr. Fred J. Conzelmann.)

(The document to which reference last above is made was received in evidence as Plaintiff's Exhibit No. 4 and the same is herein set out in words and figures as follows, to-wit:

“(TREASURY DECISION 20 W. R.)
TOTAL DISABILITY

Regulation No. 11 relating to the definition of the term ‘total disability’ and the determination as to when total disability shall be deemed permanent.

TREASURY DEPARTMENT
Bureau of War Risk Insurance
Washington, D. C., March 9, 1918.

By virtue of the authority conferred in Section 13 of the War Risk Insurance Act the following regulation is issued relative to the definition of the term ‘total disability’ and the determination as to when total disability shall be deemed permanent;

‘Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed, in articles III (relating to compensation) and IV (relating to insurance), to be total disability.

‘Total disability’ shall be deemed to be “permanent” whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. [45]

(Testimony of Dr. Fred J. Conzelmann.)

‘Whenever it shall be established that any person to whom any installment of insurance has been paid as provided in Article IV (relating to insurance) on the ground that the insured has become totally and permanently disabled, has recovered the ability to continuously follow any substantially gainful occupation, the payment of installments of insurance shall be discontinued forthwith, and no further installments thereof shall be paid so long as such recovered ability shall continue.’

WILLIAM C. DeLANCY,

Director

APPROVED:

W. G. McADOO

Secretary of the Treasury.”

Mr. GERLACK: Doctor, reading you this definition of permanent and total disability which is a part of the policy sued upon here and which has been introduced in evidence as our Exhibit No. 4, “Total disability is any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed to be total disability. Total disability shall be deemed to be permanent whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it.” Now bearing in mind that definition, Doctor, do you believe that Mr. Eide is now permanently and totally disabled under that definition?

(Testimony of Dr. Fred J. Conzelmann.)

A. I believe that he is now permanently and totally disabled, yes sir.

Q. Do you believe there is a probability that he will recover and be cured?

A. I do not think so.

Q. You have sat in the courtroom and heard all the testi- [46] mony this morning I believe?

A. I have.

Mr. GERLACK: We submit at this time these—Let's see, one, two, three, four, five—five medical examinations that were handed to me by Mr. Lynch from the government files of examinations taken at the United States Veterans' Hospital at Palo Alto, California, of the plaintiff here. We offer these as Plaintiff's exhibits in order.

The COURT: They will be received as No. 5 in evidence and be marked, I suppose, respectively 5a, b, c, d, e.

Mr. GERLACK: That is agreeable.

(The documents to which reference last above is made were received in evidence and marked Plaintiff's Exhibits 5-A, 5-B, 5-C, 5-D, 5-E respectively and the same are herein incorporated by reference as if they were set out in words and figures.)

Mr. GERLACK: Doctor, have you examined these exhibits?

A. I have read them through, yes.

Mr. GERLACK: I will ask that these—May I read these to the jury, your Honor, parts of these?

The COURT: What are they, mental examinations? I didn't understand you.

(Testimony of Dr. Fred J. Conzelmann.)

Mr. GERLACK: May I read parts of these?

The COURT: Parts of Exhibit 5.

Mr. GERLACK: No. 5, I guess it would be A, Mr. Clerk.

The COURT: If you will define what it is.

Mr. GERLACK: Yes. Plaintiff's Exhibit 5-A. "Report of Neuropsychiatric Examination. Patient Admitted October 30, 1927". This is dated November 1st, 1927. "Diagnosis: Dementia Praecox, cata-tonic [47] type". What was that, Doctor?

A. That means that they are in sort of a daze, a stuporous condition. Often will not eat, even refuse food, and may entertain a saliva so that it is drooling out of their mouths and often retain urine and feces.

Q. "Treatment Recommended: Hospitalization. Is he competent? Answer, No. Remarks and recommendations: Patient was presented to staff conference November 30, 1927 and the diagnosis appearing above concurred in by all members. He is considered insane and incompetent." That is dated November 30, 1927.

"Present Complaint: No spontaneous complaints. In answer to questions what his complaints were, he said, 'Nothing. Don't feel sick. Never noticed any change in condition. I am like I always have been.' Summary: Patient apparently normal child. Gonorrhoea prior to service. Had influenza in fall of 1918 in Base Hospital for six weeks. Denies delirium or double vision. Recovered and returned to duty, after which promoted to sergeant. After discharge had trouble holding jobs. Was let out;

(Testimony of Dr. Fred J. Conzelmann.)

four years ago, began to have headaches about the same time noted his queer conduct and remarks. Gradually became less efficient. Would remain in bed all day. Sit and stare without speaking for long time, manifesting no interest. At present some impairment of memory. More or less stereotyped movements and negative answers to questions."

What does that mean?

A. Negative answers to questions?

Q. Stereotyped motions.

A. Repeats certain things, movements of the hand, repeats it all day.

Q. "Dulling of emotional tone. Apparent blocking of thought [48] processes, flexibility of muscles with marked catalepsy."

A. Catalepsy is when he would have a certain condition of the body and you can place the body in any position and then they retain it for quite a long period of time. Often they hold up their arm until by the act of gravity it drops down.

Q. "Impairment of judgment and lack of insight suggest the diagnosis of dementia praecox, catatonic type, however, residuals of encephalitis must be excluded." What is encephalitis, Doctor?

A. Encephalitis is—Encephalitis means the brain, Latin word or medical word, and means an inflammation of the brain, and in 1918 we had great epidemics of flu and at the same time we also had epidemic of encephalitis where the individual would pass into a stupor and sleep for a long time and we call that encephalitis or sleeping sickness.

(Testimony of Dr. Fred J. Conzelmann.)

Q. It continues, "Presented as dementia praecox, catatonic type. Insane and incompetent." Plaintiff's Exhibit 5-B, Report of same hospital dated February 20, 1928. "N.P. Diagnosis: Dementia praecox, catatonic type. Is he competent? No. Patient was granted a ninety day furlough effective February 20, 1928. He is considered insane and incompetent. Mental examination: Rather careless in personal appearance. Will sit for hours doing nothing, reads a great deal. Answers are rather stereotyped, and seems rather embarrassed. No insight into his condition. Answers most questions with yes or no. Thinks that he is here for his specific urethritis treatment. Answers questions well but slowly. Marked dulling of emotional tone. Reactions to questions delayed. Associations slow. Shows marked cataleptic attitudes. At times speech is explosive in character. Impairment of memory. Flexibility of muscles with marked catalepsy has been noted in previous examination. [49]

"Neurological examination: Facial stare——"
What does that mean, "facial stare"?

A. Well, a facial stare—Well, I imagine on the neurological side there it has reference to a certain mask-like expression of the face that sometimes a patient has.

Q. You have heard these witnesses state he had such a peculiar expression to his face after the war when he came back first.

A. Yes.

Q. Was that the sort of thing you find now?

(Testimony of Dr. Fred J. Conzelmann.)

A. Well, he has a blank expression. He takes no interest now, just indifferent. Occasionally shouts out the window and dances around.

Q. "Facial stare, palpebral fissures wide, seldom swallows and often has sialorrhoea." What is that?

A. That is saliva drooling from the mouth. They don't swallow it. They are apathetic and indifferent and lack of energy and the saliva drooling and sitting still.

Q. No motor or sensory disturbances noted. Tongue slightly tremulous. Voice monotonous with no speech defect. All other neurological signs normal.

"Serological report: Negative throughout."

What is that?

A. That is, I suppose they included the Wasserman, test the blood and also the spinal puncture, taking fluid away from spinal canal and examining for the number of cells and reaction of various chemicals which will show whether the individual is suffering from organic diseases and used, of course, it is one which shows syphilis.

Q. The next examination is dated June 11, 1930. "Diagnosis: Dementia praecox, catatonic type. Treatment recommended: Continued hospitalization. Is he competent? No. If not [50] approximate date of beginning of incompetence? 1919" with a question mark after it. "Remarks and recommendations: Patient was presented to staff on June 9, 1930, the diagnoses above mentioned agreed to by all members. It is the opinion of the staff that patient is

(Testimony of Dr. Fred J. Conzelmann.)

psychotic and incompetent, permanently and totally disabled." What does psychotic mean?

A. That refers to a mental disability. Insanity is the legal word and psychosis is the medical term. And they use psychosis, that means that he has some symptoms of mental disease there.

Q. "Laboratory Reports: Urinalysis, casts, none seen. Reaction acid, albumen heavy trace. R. B. C. few". What is that?

A. Red blood corpuscles.

Q. "Specific gravity 1.026."

A. That is normal.

Q. "Sugar negative. W. B. C."—What is that, white blood corpuscles?

A. Yes.

Q. "Fifty per field." Is that normal?

A. Well, that is rather high, I should think, if it was in the urine.

Q. "Feces negative. Blood Wasserman negative."

A. Didn't have syphilis.

Q. "Urinalysis: June 13, 1930: Reaction, acid; casts none seen; mucous, moderate; albumen slight positive trace; R. B. C. few; W. B. C., moderate.

"Summary: Patient's birth and early life normal. Had the usual diseases of childhood with no complications; completed eighth grade and then two years in commercial school. Started to work as bookkeeper, then as a clerk. Social history states, while he changed jobs he was never idle, always working. Entering army, not over seas, but was promoted

(Testimony of Dr. Fred J. Conzelmann.)

to [51] First Sergeant. Received an honorable discharge. Returning to home went to work washing cars but only on job two weeks; got another job as bookkeeper but in two months let out, was too slow. Played baseball for month, then with S. P. R. R. Company as an extra for two and a half years; went to work in a garage. Social history states: 'Domestic in tastes, used to enjoy helping his mother around house, blackening the stove, etc. Was extremely fond of his sister and mother, stated that she had always been of the opinion if this sister had remained at home Arthur would never have looked at another girl.' When patient first returned home complained of headache. Often would lie still with eyes closed and would not move. In 1923 had a recurrence of his former headaches. In that same year, social history states 'Patient was very nervous, delusions of persecution were elicited, and he seemed paranoid towards one of his partners in garage business.' What does that mean, paranoid?

A. Paranoid, odity, that they are against them and chasing him or following him.

Q. "Then at home would only answer questions if mother spoke to him. Would sit at dinner table, hands folded and stare at table. In 1926 he went to Idaho with mother. There he paid no attention to anyone. Went to Seattle. Hardly ever spoke to anyone, seldom smiled. In 1926 his behavior was such that a court order was obtained to keep him away from his garage. He remained at home until transfer here. When admitted, note states: 'Neat, his

(Testimony of Dr. Fred J. Conzelmann.)

attitude constrained, expression sad.' Was oriented. There was a masked face and is drooling." What is that?

A. Masked face. Possibly a mask-like face, sort of fixed face, and drooling saliva.

Q. That runs out of his mouth?

A. Yes. [52]

Q. "Seclusive, apathetic. Before staff careless, showed no initiative, face expressionless, speech brief: answered all questions by 'Yes' or 'No', emotionally flattened." What does that mean?

A. Well, I suppose dull.

Q. "Diagnosis of dementia praecox, catatonic. Patient since has been under supervision, periods when he has refused to eat, untidy, careless, yelling, standing for hours in middle of floor; then again, neat, clean, and able to work in occupational therapy,—negativistic, and again presented as dementia praecox, catatonic."

The next examination is Plaintiff's Exhibit No. 5-D, Report of the Veterans Hospital at Palo Alto dated July 16, 1931.

"Military History: Drafted May 17, 1917. Served at Monterey, California, Camp Green, Fort Omaha. In hospital six weeks with 'flu'. Discharged at the Presidio January 29, 1919. Honorable.

"Present illness, probable cause, and so forth. Had severe headaches when he returned from the service in 1919 and for some time thereafter. Had difficulty in holding positions. Was unable to hold any position for any length of time. Headaches re-

(Testimony of Dr. Fred J. Conzelmann.)

turned in 1923 and was observed to act queer, make unusual and peculiar remarks, gradually he had become less and less efficient. Would remain in bed all day, sit and stare without speaking for long periods and manifest no interest. Became very slow and inactive. Gave up completely in 1926 and was admitted to U. S. V. Hospital, Palo Alto, California, October 30, 1927. Diagnosed dementia praecox, catatonic and during his period has manifested typical symptoms including cerea flexibilities,"—

A. That is the catalepsy, when they can be placed in any [53] position and they retain that position for a long time. Often you put them in an awkward position and they will retain it.

Q. "Inactiveness, excitement, quietude, retardation, lack of insight and impaired judgment having passed through two periods of excitement and completed two cycles of catatonic manifestations and final release from hospital on trial visit with his mother while in partial remission and discharged at her request.

"Physical examination: Well developed, well nourished ambulant adult white male with brown hair and brown eyes, 66 $\frac{3}{4}$ inches in height, weight 135 pounds. Robust. Psychiatric or neurological examination: No abnormal neurologicals. Rather mask like facial expression; knee jerks active. Patient is slow, retarded and disinterested. Slightly manneristic, delusions of impending harm. Hallucinates, flattened emotionally, talks to self. Associa-

(Testimony of Dr. Fred J. Conzelmann.)

tions slow. Psychomotor activity decreased at time of going on trial visit.

“There is slight increase in density over the right apex with a few calcified deposits along the finger radiations in this area. Dementia praecox catatonic. Occupational therapy, physio-therapy, psycho-therapy, indicated medication.”

Next is Plaintiff's Exhibit No. 5, Report of Neuropsychiatric Examination. Discharge examination by Board of Three at Palo Alto Hospital, dated July 19, 1931, Dr. R. H. Leece, Dr. F. L. Wright and Dr. Hugo Mella, Clinical Director. I will just read the summary: “Apparently no mental disability in determinants.”—

Mr. HJELM: What was that?

Mr. GERLACK: This says: “Apparently no mental disability in determinants.”

A. That means ancestors, in the stock from which he came.

Mr. GERLACK: I see. “Patient's birth and early [54] development normal. Measles was the only disease of childhood of record. No complications or sequellae.”

A. That means what follows.

Q. “Education normal, no conflicts, two years of commercial high school. Satisfactory employment and adjustment to civil life prior to service. Contracted gonorrhoea when twenty years of age. Under treatment two years. Had influenza during service six weeks. Denies double vision or delirium. Returned to duty after which was promoted to

(Testimony of Dr. Fred J. Conzelmann.)

sergeant. Following discharge had dreadful headaches and had difficulty holding positions. Was let out in 1923 and began to have headaches again about the same time and was observed to act queer and make unusual and peculiar remarks. Generally he had become less and less efficient. Would remain in bed all day. Sit and stare without speaking for long times and manifest no interest. Would not enter into games on tennis court but would bat tennis balls around without purpose. Became very slow and inactive. Admitted to U. S. Veterans Hospital, Palo Alto, California, October 30, 1927.

“Diagnosis: Dementia praecox, catatonic type based upon thought blocking, retardation, cerea flexibilis, lack of insight and lack of judgment, quietness, seclusiveness. He also had facial expression suggestive of encephalitis lethargica.”

A. That, of course, is sort of mask-like expression that often developed after a person had inflammation or the disease of sleeping sickness.

Q. “During his period of hospitalization he twice manifested catatonic excitement for few months at each time and quickly changed to periods during which catalepsy was manifest. At time of going home on trial visit he was in fairly good touch with his surroundings but was yet slow, manneristic [55] and showed regression. His mother reports he has shown slight improvement since but as yet only occupies himself leisurely, taking no interest in making an industrial adjustment and that his social adjustment is one that still requires family super-

(Testimony of Dr. Fred J. Conzelmann.)

vision and that she wants to keep him with them in the hills and near streams where she feels he will continue to improve. He is considered to be psychotic and incompetent. Permanently and totally disabled. Psychosis only in slight partial remission.”

If your Honor will indulge me a moment.

Mr. HJELM: If it refers to insanity since 1927 it is not necessary.

Mr. GERLACK: Well, I won't take the time to read it now.

Q. Now, Doctor, you have heard the—You have sat in the courtroom and heard the evidence here.

A. Yes.

Q. Now, assuming this evidence that you have heard in the courtroom to be substantially correct and accepting that as the history of the case and accepting these government records, hospital records at Palo Alto, and taking that in connection with your own examination have you an opinion as to whether or not the man was totally and permanently disabled in the spring of 1919 prior to the lapse of the policy on midnight of July 1, 1919? The question is whether you have an opinion.

Mr. LYNCH: Well, we object to the question because it purports to be a hypothetical question and we feel it is improper inasmuch as it doesn't contain all the facts. It is based on reports only portions of which were read and Mr. Gerlack is assuming that all the evidence is in in the case. On those grounds we object and hold it is not a proper hypo- [56] thetical question.

(Testimony of Dr. Fred J. Conzelmann.)

The COURT: Well, probably the matter hasn't been approached in the way it should be. Of course it compels him to accept the statements of others. I have no objection to the doctor testifying as to his own observations, also as to certain testimony given by witnesses here as to observations at certain periods and taking those observations as being true in conjunction with his answer establishing, if he can, the condition of the plaintiff at any particular time. It should be approached that way. There are conclusions in the examinations here and the doctor shouldn't be compelled to accept—Do you believe you are in a position, Doctor, to pass upon the condition of this plaintiff at the present time as to whether he is totally and permanently disabled?

A. I believe that from——

The COURT: Interposing: No. I say do you believe you are in a position?

A. Yes, yes.

The COURT: Do you believe he is at the present time?

A. I believe he is.

The COURT: And do you believe that you have heard facts testified to in this court which—I believe you have been here all during the trial——

A. Interposing: Yes.

The COURT: By the witnesses as to their observations——

A. Interposing: Yes.

The COURT: Which I presume such observations that were made have been consistent in your determination of the present condition.

(Testimony of Dr. Fred J. Conzelmann.)

A. Yes.

Q. Do you believe sufficient facts have been testified to for you to trace back this condition as having existed in years past? [57]

A. I believe that.

The COURT: Do you believe you are justified in tracing back this condition of permanent and total disability due to the present condition of the plaintiff?

A. In my opinion the disease began after he had this influenza or what is called flu at the time in the Army.

The COURT: Yes, but at what point do you believe it had attained such a magnitude as to constitute permanent and total disability, that is merely tracing back the origin?

A. Well, I believe that—As soon as the thing begins then they are totally disabled, but I believe this man as soon as he had recovered from his acute physical illness, his mental condition, however, he was totally incompetent.

The COURT: Prior to his discharge?

A. Yes.

The COURT: From the service.

A. Yes.

The COURT: This sort of an ailment, dementia praecox, is prenatal, isn't it, that is a condition which is in the person which is prenatal merely waiting for a time or a certain break-down to bring it into full activity, isn't that correct?

A. Yes. We usually speak of it as a predisposition inherent in the individual.

(Testimony of Dr. Fred J. Conzelmann.)

The COURT: At birth.

A. Well, it may be one through some sickness during the lifetime or early childhood illness and the early training of the child will cause it to develop this disease.

The COURT: Dementia praecox of itself very frequently is individual at birth, is it not?

A. No.

The COURT: You don't think so.

A. I don't believe—We will say it is in youth. Praexo [58] means youth. Usually in early youth we find it but often it will show no evidence.

The COURT: No, I am not questioning the evidence, but isn't it a condition that exists in the person waiting for something to occur which will make a certain breaking down and produce it actively so you will discover it?

A. Yes. In dementia praecox we will make the predisposition there but if conditions are not favorable it will not occur.

The COURT: It is your conclusion that as soon as the symptoms of what you consider dementia praecox appear that a person is totally and permanently disabled no matter if they actually are engaged in a vocation?

A. Yes.

The COURT: No further questions by the Court.

Mr. GERLACK: Well, now, Doctor, you say you have an opinion.

A. Yes.

(Testimony of Dr. Fred J. Conzelmann.)

Mr. LYNCH: He has already given that opinion.

The COURT: I think he has answered it.

Mr. GERLACK: Will you tell us about the disease of encephalitis lethargia, what it is and how it acts?

A. Well, this encephalitis lethargia is, of course, a sleepy sickness where the individual becomes drowsy and sleeps. That was in the first cases to be observed they found the condition, but later they found some of them were merely excited or in delirious stage that would have to be confined in a hospital for mental sickness. Of course, when it passed off we sometimes have residual effects, paralysis of one arm or one side of the face or of one leg, or we have peculiar tremors and the individual stands in one position and holds his arm very stiff and we call it Parkinson's disease or Parkinson's illness, paralysis, and it occurs [59] after encephalitis. The whole brain is involved, the instrument of the mind, the member that controls our emotions and naturally when the nerves are inflamed why it would be responsible for the peculiar attitude.

Mr. GERLACK: I think that is all.

The witness was taken for

Cross Examination

By Mr. HJELM:

Q. Now, Doctor, would the fact that the plaintiff was discharged from the army in 1919, January 1919, showing no disability, would that be information that you would want to take into consideration

(Testimony of Dr. Fred J. Conzelmann.)

in arriving at the conclusion that you have come to?

A. Yes, that would have to be taken into consideration.

Q. Assuming it to be a fact that his discharge shows an entry that he had no disability, would that cause you to wish to reconsider the opinion that you gave?

A. No, sir.

Q. You would still come to the same conclusion?

A. That is the way that he was discharged. I have discharged many hundreds of them in one day. We didn't make much of a mental examination at Camp Kearney. They went through in a hurry. We discharged them and put down "They are physically well."

Q. Did you examine this man at Camp Kearney?

A. No.

Q. In other words, the examination you made there at the time they were discharged didn't amount to much?

A. Well, just in a general way. We didn't spend a half an hour examining a person for his mental condition or if they had delusions or hallucinations. If he appeared well and if he didn't complain, we thought he was all right.

Q. Well, Doctor, if he was at the time totally and permanent- [60] ly disabled from a disease known as dementia praecox, would not his facial expression, as you have related, have indicated a blank appearance at that time?

A. Well, it may have, yes, but it isn't necessary to have that because they look sometimes entirely normal in the dementia praecox.

(Testimony of Dr. Fred J. Conzelmann.)

We do not make a diagnosis of dementia praecox on one symptom. We do not decide the case on one symptom no more than we decide a person's character by one act, single act. We must have the whole life, take the whole life into consideration. You have to take all the things in the aggregate. We usually get a whole life's history, but it is not absolutely necessary to have the history of his youth to make a diagnosis.

Q. Was it necessary at all?

A. Well, we usually try and get it.

The COURT: The point is this, it might be interesting or it might be confirmatory of your views to have other and different testimony than that presented in this case. What he is asking you is the direct question, is it necessary for the purpose of reaching your conclusion that you have expressed here to have any testimony or have any facts in your mind other than those that have been testified to?

A. No.

Q. Well, when you testified in response to questions from counsel, did you have in mind the facts you have down at Stockton and you took it into consideration?

A. Yes.

The COURT: Interposing: Just a minute. I will ask this question and I will entertain your motion. Then to reach the conclusion that you have given here today in court [61] you have taken into consideration, you find it necessary to take into con-

(Testimony of Dr. Fred J. Conzelmann.)

sideration data which has not been testified to by witnesses, is that correct?

A. No, sir. The things which were testified to by the mother and Mrs. Martin——

The COURT: Interposing: Are you prepared now to say your conclusions which you have expressed here as to the existence and duration of this disease, you are willing to state they are correct without taking into consideration anything else but what is testified here?

A. I do.

The COURT: You say that right now?

A. Yes.

Q. (By Mr. HJELM) At the time you answered the question propounded by plaintiff's counsel you did take into consideration the fact that you had at hand by virtue of the reports at Stockton which are not in evidence here, you did take that into consideration, did you not?

A. Well I don't know that I did. I didn't think about it but I have, of course, the statement——

Q. Interposing: Well, we will limit it then. You didn't really need to know anything about his boyhood history or army record in order to arrive at the conclusion you did other than what is testified to?

A. No.

Q. Therefore you had no personal knowledge whatsoever or knowledge derived from other doctors of the plaintiff prior to the year 1927?

A. We get——

(Testimony of Dr. Fred J. Conzelmann.)

The COURT: Interposing: The point is you, yourself, never made any of these observations prior to 1927; in other words, everything you have based your opinion upon as [62] to his conduct, as to what he did and said prior to that date has simply been that you accepted the statement of witnesses who went on the stand?

A. Yes.

Mr. HJELM: I want to get that. So that since 1927 there is no question, Doctor, but what he was non compos mentis?

A. Yes.

Q. But the only evidence that you have taken into consideration in arriving at your answer to the hypothetical question that in your opinion he was in 1919 permanently and totally disabled, the only evidence that you examined was what the mother testified to and what the friend, the lady friend testified to.

A. And there are what the doctors, the experts——

Q. Interposing: But those doctors are all after 1927, were they not, after 1927?

A. Yes. Well, those——

Q. Interposing: Therefore all you had in addition to that which has transpired since say the first of the year, 1927, was the testimony of the mother and the lady friend?

A. Yes.

Q. And you then as an expert, you considered that the testimony of the lady friend who told about

(Testimony of Dr. Fred J. Conzelmann.)

how he appeared and acted to them, and what the mother testified as to how he acted was sufficient to connect up the patient's condition with dementia praecox?

A. Yes.

Q. With that of 1919?

A. Yes.

Q. And to the extent that you believed he then was wholly disabled?

A. Yes. [63]

Q. (By Mr. HJELM). Well, I will put it—I didn't know that he would object and I thought I would go as far as I could. Now, Doctor, you are not of the present opinion, are you, that the plaintiff here could not do any physical work in 1919, are you?

A. No. He can do physical work now.

Q. Did you know him, did you know that he was a railroad fireman in 1921 and '22.

A. That is what they testified to.

Q. Did you think he was wholly disabled then, at that time?

A. I think so, yes, according to—

Q. Interposing: How do you differentiate that between—Assuming I have gallstones now and that I am working.

A. Yes.

Q. Trying to. Assume that the Mayo doctors diagnosed me as a gallstone patient—

Mr. GERLACK: Interposing: I submit that is argumentative and not proper cross-examination.

(Testimony of Dr. Fred J. Conzelmann.)

Mr. HJELM: No. I am trying to bring out something. Assume a subject, a certain person has gallstones for which he should have an operation, and if he doesn't that he will die. Will you say he is wholly disabled?

A. Well, in the sense as I understand this disability, it means he can't continuously work.

Q. In other words, that is a parallel case?

A. That he would be totally disabled.

Q. That is a parallel case, Doctor. I wonder if I could by telling you I have gallstones cause you to change your opinion.

A. Well, if you had gallstones and you did work and you get out but you can't continue to work and have a gainful occupation.

My thought is that from the time he left the army [64] he should have been placed in some place where he wasn't employed. Making the effort and the stress and strain of life, of course, has caused him to break. In my opinion dementia praecox is not congenital, although there may be a predisposition to it that can be brought about by some event. Taking the definition of permanent and total disability as any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation, I would say that he was totally disabled in 1919. I believe he was because he could not continuously continue. I feel that he should have been in a hospital at that time. I think this because from the evidence that one of the witnesses said, he was

(Testimony of Dr. Fred J. Conzelmann.)

odd and queer and wouldn't talk. I wouldn't hospitalize every man who was odd and queer. Probably every one of us has some odd idea but it depends on the setting and what occurs. The fact that a person works or does something doesn't mean he is not sick. It is a fact that the degree with which dementia praecox accelerates or grows is different in various subjects and is also different under various circumstances. In this case the evidence was in 1919, soon after he came out of service, he acted queer and odd.

Q. Haven't you, Doctor, in your experience as a doctor had many, numerous occasions, experiences where you have seen patients acting just as that young lady said he acted and notwithstanding that your observation of that subject over the years would be that he didn't develop into an active dementia praecox?

A. Well, I wouldn't say it was active but it was so that it didn't interfere with his work. If he continued it was to the detriment of his own personality because he had——

Q. Interposing: You later observed he could work, that he [65] could do some work?

A. Oh, yes, they all can.

Redirect Examination

A change of personality is this, a person becomes, or he is considered odd or queer or a little different and they are indifferent, apathetic and even, of

(Testimony of Dr. Fred J. Conzelmann.)

course, those ideas of constantly trying to make good and a mental disease definitely recognizes itself. Very often they over rate their ability.

Q. I will ask you this, Doctor, are you able to make a diagnosis of dementia praecox in this case from the symptoms that were manifested in 1919 with the mask-line expression and the pain and headaches is back of the head, back of the brain, back of the head and drowsiness?

A. I consider that symptoms of dementia praecox.

The disease of sleeping sickness or encephalitis lethargica may have such symptoms in support, and an infection like that could be the exciting cause of dementia praecox. There are a great many people who have dementia praecox that we are coming in contact with every day of our lives but it is not very often evident that it is discernible and they are being treated. My point is that dementia praecox is a type of disease that if you work will quicken it and once having made its manifestation it should be treated, and even though they can do things, slightly different lines of work, they should not be allowed to do them. They should be segregated. I have seen cases in the asylum where people have come in and undergone treatment and got back and gone out of the asylum and met the outside work and then they came in contact and got nervous and came back into the asylum. They get better in the asylum than they do in the outside

(Testimony of Dr. Fred J. Conzelmann.)
world, rest [66] and quiet and shelter from the storms of life and treatment is the only way of effecting a cure.

Recross Examination

Q. (Mr. Hjelm) Now, Doctor, one more question. Could you form presently an opinion as to whether or not the dementia praecox became active when he was in the army?

A. Well, of course, he thought—well, according to the sergeant's report there up until he was sick, under the stress and strain he seemed to be happy and contented and worked all right and did his work until this more serious infection, whether it was flu or encephalitis, it was a serious infection and after that the change of personality came on.

Q. Could you now give a diagnosis as to whether or not he had dementia praecox at the time that he was discharged?

A. No. That is because—that is just from the symptoms of what some other witness said who brought him home, that he looked this way.

Q. Therefore you really base your opinion upon the testimony of the young lady about his conduct?

A. Yes.

Q. The way he was looking?

A. Yes.

Redirect Examination

Q. Do you believe in this particular case his whole trouble was caused by the war, his war experiences?

(Testimony of Dr. Fred J. Conzelmann.)

A. Well, I wouldn't say war experiences. I think the illness that he had.

TESTIMONY OF DR. EDWIN M. WILDER,

a witness called on behalf of plaintiff, after first being sworn, testified as follows: [67]

I am a licensed physician and surgeon, a graduate of the University of California Medical School in the year 1900. I have practiced continuously since that time. I have been connected with the French Hospital in San Francisco and the Napa State Hospital. I have been one of the examiners of insane people for commitment and I have been qualified as an expert in the diagnosis both in the Federal and local courts, county courts. I have testified in Federal courts. I have testified in eight or ten of the superior courts. I was appointed a member of the Lunacy Commission of Sacramento County in 1905 and I guess I still am a member. I have been in the courtroom and heard all the testimony in this case. I have had considerable experience in the diagnosis of cases of mental disease. I don't treat it. I simply diagnose it. I have heard all the testimony in this case and I feel that I am in a position to state whether at the present time this particular patient is insane or not. I also feel that I have sufficient data in my possession, assuming the facts to be true, to trace back during what period the in-

(Testimony of Dr. Edwin M. Wilder.)

sanity existed. Assuming the facts which I have heard to be true, I think the present diagnosis is dementia praecox, paranoid type. Dementia praecox is a mental disease of early, generally of early adult life, from fifteen to forty-five. We call it dementia praecox to distinguish it from the dementia or lack of mind of the old people, senile dementia, which is a totally different thing. Its origin is somewhat in dispute among students of the thing. It is characterized by many varying symptoms but primarily by and especially by the changing personality and failure of victims to realize the circumstances under which they find themselves and the importance or the severity of the situation. There is a progressive mental deterioration which is frequently followed [68] by remission where he doesn't get any worse. I don't think they ever get any better. They sometimes stop and run along a while and then have another period of descent mentally. They sometimes have muscular peculiarities and they frequently are subject to hallucinations of sight, hearing and delusions. Delusions are generally fixed in character. That is the same type of delusion, same story goes along in their minds. A delusion is a conclusion arrived at through faulty interpretation of either real or false data which can't be corrected by the patient by the use of his own mind. Sometimes it is that somebody has it in for him. A man in normal mind,

(Testimony of Dr. Edwin M. Wilder.)

you can talk with him, you can reason with him and explain to him.

Q. If those facts that have been testified to are true, when, in your opinion, did dementia praecox in the case of Arthur J. Eide begin?

A. In the late fall of 1918 or spring of 1919.

Q. When would you say from those facts was the incipient stage?

A. Probably from the time of the severe infection of whatever character it was, also probably in camp until the first testimony that we have as to change in personality.

Q. (By the Court) When would you fix the beginning, the actual beginning of the illness that he had, positive manifestations of dementia praecox?

A. I think that—we have testimony as to his normalcy prior to the illness. We have testimony of the severeness of the illness. We have the testimony of the Sergeant as to the severity of the illness and we have the testimony of, as to the changed personality at the time of his arrival at San Francisco. Now, between the inception of the infection, which, to my mind, was probably the provoking cause—— [69]

The COURT: Interposing: You think, in other words, prior to his discharge, prior to his discharge he had shown the presence of dementia praecox?

A. I am not prepared to say as to that. He had shown the presence, through the sergeant's testimony, of a very severe infection, practically putting

(Testimony of Dr. Edwin M. Wilder.)

him out of business, but I don't think we have any, as I recall it, I don't recall—it was only an affidavit and read and I didn't get it as well as I did from the men testifying directly, Mr. Romaine's testimony as to his character when he came back to the office immediately after his discharge is the point that I definitely recognize a change of personality.

The COURT: In other words, you recognize then what appeared to be manifestations of dementia praecox?

A. In the light of the further developments, yes.

I would say that at the time Mrs. Martin saw him in the office in February or March of 1919 he was suffering from some type of dementia. Whether it was a result of the early dementia praecox or the result of encephalitis at this date I am not prepared to say. He may have had them both. We have testimony all through of some symptoms of both. The disease that is generally indicated by the name of encephalitis lethargica, is an acute infectious disease of the brain itself and the central nervous system and the spinal cord. In our vast medical history there no doubt were previous epidemics of it as there were with the flu, not identified at the time. They didn't know enough about it. Looking back, as I say, we have epidemics which we believed were encephalitis. The first case that showed up comes as the lethargic type, the dull sleepy type, and we hooked that name on to it of encephalitis lethargica as opposed to the inflammation of the brain but we

(Testimony of Dr. Edwin M. Wilder.)

know now that a good many of the cases, although not this one, at that time vary in the symptoms accord- [70] ing, first, to the severity of the infection, and second, according to the part of the brain and cords, central nervous system that the minute areas of infection strikes and even after absence may become acute again. It starts in first a good deal like the flu, headaches and considerable fever. The headaches are pretty generally across the entire contents of the skull. During the period described by Sergeant Barrett and the witnesses who saw him when he first came back, he had a very severe infection of some kind. We haven't any medical observation of his army—at the time he was in the army. We have to reason from the observations afterwards when he was partially recovered. I, frankly, don't know. He had one or the other or both.

Q. Well, I will read you this definition, Doctor. This is our exhibit. The definition of total and permanent disability is "Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed to be total disability. Total disability shall be deemed to be permanent whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it." Bearing in mind that definition, Doctor, have you an opinion as to whether or not Arthur J. Eide was totally and permanently disabled within this definition prior to July first, 1919?

(Testimony of Dr. Edwin M. Wilder.)

A. I think he was, yes.

Q. You have an opinion. What is your opinion?

A. I say I think he was.

My view is not that he could not muscularly do certain things but that the disease was a continuing thing and that if the matter has not been gone into with known types of treatment—very much like tuberculosis, a fellow [71] with tuberculosis. He is totally disabled. If he goes out and chops wood, he could chop wood for a while but he is just gas much totally disabled in view of the fact he could not do it—. I believe from the time that dementia praecox made its manifestations and no matter how far it has progressed, as soon as you can recognize it as dementia praecox, that a man is totally and permanently disabled from then on. Dementia praecox isn't revealed by the nature of the disease even in the early stages. There is a certain point where he always breaks down. He always loses his job. He hasn't good reasoning capacity. He works only under directions. You can take a man not far gone in dementia praecox and if he is not violent with an attendant standing alongside, he will hoe weeds but he may hoe the tops off the flowers at the same time.

The COURT: That is when it has reached a certain point. Of course, if you establish that he has reached that point where he will do that,—but what I am speaking of is this: Isn't there an early stage from the time it makes its manifestations that the man is able to seek and hold employment and to make a livelihood out of it?

(Testimony of Dr. Edwin M. Wilder.)

A. They don't make a livelihood, Judge.

The COURT: You don't believe this man could make a livelihood?

A. No.

As soon as it makes its manifestations he is totally disabled. He is just as much dementia praecox as he ever will be later. Just like a typhoid; the first week he may walk around and do his work. Well, he is just killing himself and he is just as much disabled then as he will be at the time when he drops. I believe that Mr. Eide showed all the symptoms of dementia praecox prior to July 1st, 1919, [72] and it was reasonably certain at that time that he would carry this disease throughout his lifetime. I don't think dementia praecoxes recover. In the earlier stages of dementia praecox there is no question but that, the first few manifestations of the praecox, the quiet, the rest, are the most essential things in bringing the case to a condition of suspension. If you catch a case and rest it a great deal, you have a reasonable amount of expectancy of getting it to remit at a relative high grade but in these later cases where they are definitely a dementia praecox it is unfortunate that we have occasional periods of irritation or over wear and tear that result in——

The COURT: Interposing: Do you mean the progress of the disease?

WITNESS: The same amount of disturbance earlier will result in nothing more than modifying the degree while if you give it the same amount

(Testimony of Dr. Edwin M. Wilder.)

later you may kick up a certain amount of violence that will require sequestration and all that but at the same time you don't have any effect upon the termination of it.

I think the only hope of treating the disease successfully is to keep him at rest, to keep him from being up against the stress and storms of life.

Cross Examination

If I had observed the things that the young lady in the insurance office said she saw, I don't think I would have said to myself, there is a case of dementia praecox. I think that I could probably from a limited amount of observation then have determined that he was mentally depressed. Very frequently you can't tell when a case of dementia praecox has developed unless you have the preliminary information and later information. You have only one section of the dementia praecox from her answers. The diagnosis of dementia praecox [73] is so dependent upon the issue of character that while you can observe a set of obviously—set of sometimes obvious——

The COURT: Interposing: In other words, Doctor, you have to have sufficient results of observations upon which to predicate a definite opinion.

A. Yes. I know he is depressed but I can't tell what kind of depression.

The COURT: I will allow the question in that form. Assuming you had no history prior to his discharge—Suppose the first data you get is after he has been discharged, would you trace back his inca-

capacity of dementia praecox to the time that this young lady testified she saw him acting as he did?

A. If I may qualify I will say no.

The COURT: Proceed. That is the question.

Mr. HJELM: Your answer was no? Was your answer no?

WITNESS: There is nothing at that date, in the absence of all other subsequent and preceding information, to justify a diagnosis of dementia praecox merely by mental depression. I can't go into a differentiation as to what it was. He was sick, no doubt about that. What kind of sickness I am not prepared to say without more information.

Q. When was he sick?

A. He was sick on the day of his misbehavior to the young lady.

Q. And that date, you arrived at the conclusion he was sick on that day because he appeared to be in a brown study and because he was shifty in his appearance and on that alone you would say he was sick?

A. Not that alone. I would say he wasn't in his normal mind.

Assuming that he had no severe infection as the result of influenza, my present opinion as to the question of his total disability in 1919 would not be different. Something [74] broke his mind down. Whether he had had any manifestations of any kind or significance prior to the date that he was in the young lady's office, that wouldn't have any bearing on the question. None whatever. I do not think that his behavior on the day in question with the

(Testimony of Dr. Edwin M. Wilder.)

young lady was sufficient for you to determine that it was dementia praecox.

I examined this man Thursday, the 22nd day of February, 1934. I know nothing of him prior to that time except the testimony which I have heard here.

Q. Wouldn't you say the doctor who had examined him at the time he left the army on January 25, 1919, who had personally observed him, made personal observations of him, would be in a better position to give some accurate helpful information than you who had not seen him until 1934?

A. If the man who examined them when they left made no more of an examination than I gave when I put them in the army, no.

Q. What?

A. I said if the man who examined him when he left the army gave no closer examination than the examinations that I did, that was personally made when the boys were put into the army in 1918, I would say no.

The COURT: The question is argumentative but there is no objection. I was referring to the question.

Mr. HJELM: Well, now, Doctor, you wish to leave this thought, that the doctors who examined the soldiers both when they went in and went they went out were careless in their examinations?

A. Not careless by intention. Simply overwhelmed by a mass of material.

(Testimony of Dr. Edwin M. Wilder.)

Q. Let's put it that way, that they didn't make careful examinations.

A. They could not.

I personally believe that dementia praecox is caused by a severe infection, severe physical damage. I believe [75] that it doesn't necessarily have to be prenatal. There are some cases where the body may not be predisposed to receive it, and a man with a strong healthy mind and body may acquire dementia praecox. My opinion is that it is the result of some force, strain thrown upon the physical character of the body reacting upon the brain which is after all purely physical. If the history of this man as far as we have in this case was known to me upon the day that he appeared at that office before that young lady, I had known his history and then observed the man doing the things he did, not knowing what is going to occur in the future at that time, I believe I could have said "this is a manifestation of dementia praecox." I would come mentally to the conclusion that he had dementia praecox. On limiting any answer to what occurred in the office that day I could not say that he had dementia praecox. If at that time I knew all the facts up to that day and I observed him there in the office and heard his conversation I would say he should have been hospitalized, and even before this time he should not have sought employment.

Physical exercise is not in itself dangerous and is a necessary part of the treatment of the praecox. It is the shocks from contact with the world that do the damage.

(Testimony of Dr. Edwin M. Wilder.)

Q. So physical exercise, as I understand, Doctor, physical exercise in and of itself is not bad for him; in fact that is something you give them to help them. In other words, being occupied with something that ought to be done on a car or a train, that amount of thinking that would be required to do that, you don't think that that would be a strain, would hurry on the dementia praecox?

A. I do. I think working on a train, a train man and all the incidentals of train work are not conducive to the type or kind of rest, or any of the things that would help his recovery. Then the contacts, the responsibility in determining [76] just when to make a flying switch, let them out, throw over a lever when the thing is within twenty feet or twenty-five feet, that is quite a problem. Baseball is a good thing and it is educational for this reason, that he is working in a definite coordinated healthful surroundings. The other boys I am not speaking of professional baseball, but baseball like the teams at Stockton, let us say, where they can't scrap. He is doing a muscular thing according to a definite rule and is very much better for him than working in the garage.

Redirect Examination

Q. In this particular case Mr. Hjelm has picked out various detailed instances of conduct by Mr. Eide and asked you to venture an opinion. What we are interested in is the whole picture, taking the whole picture clear back to the beginning when he

(Testimony of Dr. Edwin M. Wilder.)

was affable, agreeable, sociable, dependable, neat in appearance, and an ambitious young man before the war, he suffered the infection in the fall of 1919, followed by a complete personality change whereas afterward he presented a picture of undependableness, unsociability, mask-life expression, unreliability, bearing in mind all those things in the man, have you any question in your mind at all that he had dementia praecox and was permanently and totally disabled in the spring of 1919, prior to July 1, 1919?

A. I have no doubt. I have said so.

Q. Do you make railroad examinations yourself?

A. I have not for many years, but I have done so in the past.

Recross Examination

At the present time I am practicing here in Sacramento and I am not connected with the government or the state. I was at Napa in 1902 or 1903 and served for three years. [77] I never saw Mr. Eide until Thursday of last week, when I examined him at the request of Mr. Gerlack.

MRS. BERTHA K. EIDE

(Recalled on behalf of plaintiff).

By Mr. GERLACK: Mrs. Eide, do you know of your own knowledge why Arthur didn't pay any

(Testimony of Mrs. Bertha K. Eide.)

premiums on his insurance after July 1 or June 1, 1919?

A. Well, he didn't work. He went from place to place and there wasn't enough, you know, to keep the house going and and keep me going, he wasn't able to.

Q. Now, the other question I want to ask you is this: You put in a claim in this case in 1929. Why didn't you put in that claim before?

A. Well, I didn't know if we had any right to it but someone told me down in Palo Alto that I should put in a claim.

Q. Just as soon as you learned you had a right under the policy, you put in a claim?

A. Yes.

Mr. GERLACK: That is all.

Mr. HJELM: Oh, that is all.

Mr. GERLACK: That is the plaintiff's case.

Mr. LYNCH: At this time we would like to make the customary motion for non-suit on the ground that there is no evidence before the court to show the disability on the date alleged.

The COURT: The motion will be denied.

(The records of the Adjutant General's Office relating to Arthur J. Eide received in evidence and marked "Defendant's Exhibit #1" and is incorporated herein by reference the same as if it were fully set forth in words and figures). [78]

DEPOSITION OF HENRY BOGEL.

The deposition of Henry Bogel, a witness on behalf of the defendant, was read in evidence and the same reads as follows:

I reside at 1427 43rd Avenue, San Francisco, California, and I know Arthur J. Eide. In 1920 I was employed by Levinson Bros. as a car washer. They were in the business of storing and washing cars. During 1920 Arthur J. Eide worked there. He was a floorman there for about six months. He waited on the gas trade. He sold gasoline and oil. He worked from eight in the morning until six at night. I saw him every day and could see him doing his work. He waited on the customers and sometimes when a party drove in the doorway, he backed the car in a stall. At that time his physical appearance was very good, he was healthy, strong, he was all right. We talked together sometimes when there was nothing to do. He appeared to converse in a coherent and connected manner. He left Levinson Bros. sometime in 1920. He was going to start a garage up on Divisadero Street. I saw him once after that. A couple of years later he came down to see me and wanted me to go into partnership with him. I told him I wouldn't go into partnership with him because you couldn't make any money in his proposition, there were four men in it. That is all I said. His appearance at that time was about the same as before. He was all right. There was nothing wrong with him that I saw. I found him all right. I saw him after that when he was running around with a

(Deposition of Henry Bogel.)

little Ford truck with a box on it. He was going around from house to house trying to see if he could get anybody's car to grease. He was around once in our place on Natoma Street. At that time he showed me a lubrication machine. He said he figured to have a couple of those machines, but I told him there was no money in it. He showed [79] the machine to me and explained its operation to me. He figured to get \$1.50 a car.

(Cross-examination waived).

Redirect Examination

It was in 1920 that Mr. Eide worked for Levinson Brothers. At that time he was 5'7" tall, heavy set, and had blonde hair.

TESTIMONY OF JOHN A. SILVA,

a witness called on behalf of defendant, after first being sworn, testified as follows:

I am head timekeeper of the Southern Pacific Company and have been such for twelve years. I have with me the personal records of Arthur J. Eide and an abstract of his earnings with the Southern Pacific Company. I am sufficiently acquainted with the records of the Southern Pacific Company to positively state that these are the original records. They show the period of time that Mr. Eide worked for the Southern Pacific Company. He com-

(Testimony of John A. Silva.)

menced work in June, 1920. He worked as a machinist's helper at Dunsmuir, June, July, August, and as fireman in September, down to October, 1921. He first went to work in June 1920 and was discharged for the first time in January, 1921. He was off until May, 1921, was reemployed in May, 1921, and worked until October, 1921. He was reemployed January 1922 and worked until April, 1922.

The employees of the Southern Pacific Company at that time were paid every fifteen days. The last half of June, 1920, Mr. Eide earned \$62.30; the first period in July, which is July 1st to July 15th, \$2.69; the second period in July, which is July 16th to the last day of the month, \$34.90; from August 1st, to August 15th, \$81.84. From August 16th to the last of the month he earned \$14.73. From September 1st to September 15th he earned \$140.84. From [80] September 16 to the last of the month he earned \$149.83. From October 1st to October 15th he earned \$172.34. From October 16th to the last of the month he earned \$139.64. From November 1st to November 15th, \$67.59. From November 16th to November 30, \$181.84. From December 1st to December 15th, \$83.64. From December 16th to December 31st, \$130.52. From January, 1921, from the 1st to the 15th, \$76.24. From the 16th of January to the 31st, \$25.85. From May 16th to 31st, \$24.03. From June 1st to the 15th, 1921, \$147.48. From June 16th to June 30th, \$121.50. From July 1st to July 15th, \$24.78. From July 16th to July

(Testimony of John A. Silva.)

31st, \$28.07. From August 1 to August 15, \$117.20. From August 16th to the 31st, \$64.16. From September 1st to September 15th, \$59.56. From September 16th to 30th, \$51.99. From October 1st to 15th, \$36.00. From January 1st to January 15th, 1922, \$46.80. From January 16th to 31st, \$65.52. From February 1st to the 15th, \$60.84. From February 16th to the last of the month, \$46.80. From March 1st to March 15th, \$60.84. From March 16th to March 31st, \$65.52. From April 1st to April 15th, \$9.30.

Mr. Eide was working for the Southern Pacific Company up at Dunsmuir up to October, 1920; from June, 1920, to October, 1921, and at Bayshore from January, 1922 to April, 1922. The men worked according to seniority, that is, the greater the number of years that you have with the company, the better opportunity you have to work. For instance, a fireman on the extra line, why the greater number of years he has, why he has preference for better runs or to work continuously. In this case it shows he was cut off the working list at certain periods. That means when there isn't enough work the younger men are cut off the working list. They are not permitted to work until the organization and the company permit them to come back. The records show that Eide was [81] cut off because there wasn't work. If he were laid off because of illness it would not show on the record.

(Two applications for employment received in evidence and marked "Defendant's 2-A and 2-B").

TESTIMONY OF FRED W. GREENMAN,

a witness called on behalf of the defendant, after first being sworn, testified as follows:

I am a timekeeper for the Southern Pacific Railroad and have been employed by that company for twenty years. I know Arthur J. Eide and became acquainted with him I think in 1920, when he first came to Dunsmuir. I was there before he arrived. I would see Mr. Eide practically every day while he was working there. I wouldn't say every day but I saw him about as often as I saw anybody in the same department he worked in. I was around the shop quite often and I would be seeing him on the street occasionally, practically every day, because it was a small town and going to and from work I would see him quite often. I was very well acquainted with him because he came up there to play baseball and I was a baseball fan and went to all the games and talked with him quite often. I knew him all the time he was in Dunsmuir. I observed him playing baseball up there. I think I saw practically every game that was played in Dunsmuir. He played on Sundays only and I saw practically every game he played in town and probably the games in the neighboring towns. They played probably every other Sunday, sometimes two or three Sundays straight and then a couple of Sundays out of town. I also attended a few of the practices of the baseball team. I observed Mr. Eide practicing and throwing baseballs on all those occasions. He

(Testimony of Fred W. Greenman.)

was a catcher. I considered Mr. Eide a good baseball player. As far as I [82] know I don't recall of him ever being taken out of a game. He appeared to be happy and well pleased with himself when he was playing baseball. He had the appearance of being in good health in every way. I never noticed anything unusual about him at all.

Cross Examination

I knew Mr. Eide from June 1920, until he left there, the winter, I think, of January, 1921. He came back in May, 1921, I knew him until that fall. I am not testifying from the records but I knew him as well as I would know anybody else who worked for the company around Dunsmuir. He quit there the first time—he was cut off the board in the slack season of the year. They always cut off. They take them off the board because not enough work. They run in seniority order and the men with very little seniority during the slack season are as a rule cut off the board. I don't know of my own personal knowledge whether he was taken off the board for being sick. During the time he was up there I never noticed that he seemed to have a fixed expression on his face.

Q. Did he ever complain to you about having headaches?

A. No.

Q. Did he ever appear to you to be nervous?

A. No.

(Testimony of Fred W. Greenman.)

Q. Would you say during that time that he was not nervous?

A. As far as I know, he was not.

Q. Would you say that during that time he didn't have headaches?

A. No, sir.

Redirect Examination

The baseball team was in a small town league. They weren't incorporated into a league but supposed to be regular games. It was to an extent professional. I can't [83] say that Mr. Eide was paid. I know that he was supposed to be paid, and they were on salary—he was a salary player although I never saw him paid any money.

TESTIMONY OF KENNETH H. HORNER,

a witness called on behalf of the defendant, after first being sworn, testified as follows:

I am a civil engineer employed by the Southern Pacific Company. I was employed by the same company at Dunsmuir, California. I observed Arthur J. Eide at that time quite often. I would see him on Sundays when we had our Sunday baseball games and through the contact of a small town. I also had occasion to be quite often in the shop doing certain observations and mechanical work and I had occasion in that way to contact him, not personally, but to see him. I am quite a baseball fan and I saw him playing baseball quite often. I would say that he

(Testimony of Kenneth H. Horner.)

was a very good baseball player. I was not personally acquainted with Mr. Eide but if he was here in this courtroom I could identify him. During 1920 and 1921 I never noticed anything about him with regard to his mental or physical condition out of the ordinary.

Cross Examination

I never talked to Mr. Eide. I would see him on the street and knew who he was. I never observed anything about him that was not in my opinion normal.

TESTIMONY OF LYLE A WELLS,

a witness called on behalf of the defendant, after first being sworn, testified as follows:

I am employed by the Pacific Fruit Express Company. In 1920 I was in Dunsmuir. I worked in a pool-hall and played baseball. I went there about June 6 or 7, 1920 I was [84] pitching there on Sundays at that time. I knew Arthur J. Eide and became first acquainted with him in the latter part of June, 1920. He was catching for the club and I was pitching. We were all being paid. It was either \$10.00 or \$15.00 a Sunday. We played every Sunday. We practiced two or three nights a week in the evening. Mr. Eide participated in these practices. Mr. Eide was the catcher. Since that time I have played professional baseball and in my opinion Mr. Eide was a very good baseball player. At that time I thought he was one of the smartest catchers I had

(Testimony of Lyle A. Wells.)

thrown to. I did not ever notice anything unusual about his physical or mental makeup. In addition to playing baseball with Mr. Eide, we roomed together about two months or a little better in the fall of 1920, up to the time I was married on February 2, 1921. We roomed in the same room. I seen him most every night except when he was out on his run while he was a fireman. I never noticed anything in all that time unusual about Mr. Eide in regard to his physical or mental makeup. I never heard him complain about anything.

Q. Just how did Mr. Eide act in comparison with a normal person?

A. I didn't see any difference. He was just a happy-go-lucky kid.

Q. At that time he was playing baseball do you know if he was employed?

A. Well, yes. He first went to work as a machinist helper in the shop and later when he went on the road as a fireman.

Q. He was playing baseball during that time?

A. Yes.

Cross Examination

I was friendly with Mr. Eide and I know where he is at the present time. He never complained to me about any- [85] thing. I wouldn't call him a nervous man.

TESTIMONY OF DR. EDWIN J. CORNISH,
a witness called on behalf of the defendant, after
being first sworn, testified as follows:

I am a physician and surgeon and have been licensed to practice in the State of California since 1904. I am a graduate of the Rush Medical School in Chicago. I recall the plaintiff in this case, Arthur J. Eide. I examined him in November, 1920, when he applied for employment with the Southern Pacific Company as a locomotive fireman. At that time I made a physical examination of the applicant for any defects and questions that were asked the applicant and answers given. He passed the examination that was required physically. I gave him a rating of first class, which is distinguished from two other ratings, which are, rejected, and defects noted. The examination took about fifteen minutes and I had occasion to observe the conduct and observe his various reactions while I was examining him. I didn't notice anything unusual in either his physical or mental makeup at that time.

Cross Examination

Q. (By Mr. Gerlack) Doctor, did you give him any mental examination whatsoever?

A. Other than just observation.

I gave him the Romberg test and he was normal. I did not give him the Babinsky test. The Romberg test is made with the patient standing with his eyes closed to see the position that they take. The examination was made at the request of the superintendent of the Shasta Division. I don't claim to have

(Testimony of Dr. Edwin J. Cornish.)

made a mental examination, that is, not any general mental. It is more of a physical examination. [86] There is another part of the test which includes an examination for any physical defect, an examination of the heart, the lungs and the abdomen.

Q. As part of your routine you don't purport to make a mental examination?

A. Well, just from the observations and a question is asked the applicant if he has ever had any nervous disease.

Q. Do you recall in this particular case, Doctor, whether or not he had a fixed stare or fixed expression on his face?

A. I don't recall any such condition.

Q. You don't recall this man at all, do you?

A. Yes.

Q. You do. Just describe him then.

A. Well I recall him as a baseball player. I have seen him playing baseball, a rather short, heavyset man.

Q. Mental patients can play baseball, can they not?

A. Yes, if they can.

Q. Yes. Mental patients are capable of playing baseball, are they not, although they are badly affected mentally?

A. I think it would be possible for them, yes.

Q. As a matter of fact at the State hospitals, Napa and also Stockton, you go up there on Sunday afternoon and you will see baseball games in opera-

(Testimony of Dr. Edwin J. Cornish.)

tion where they have mixed teams of patients and attendants and sometimes doctors, isn't that true?

A. It might be, yes, part of the treatment for them.

Redirect Examination

If this man had had a fixed stare on his face, I think I would have noticed it. I did not notice any such stare. If he was given to turning his head from side to side and had a pasty expression on his face, I think I would have noticed that, but I did not see any such signs. [87]

Q. Was there anything in any of the actions of this man or any of the findings which you made which would indicate to you that there was anything abnormal about him mentally or physically?

A. I didn't note any.

Recross Examination

I examined Mr. Eide just this one time. I saw him playing baseball when he was in Dunsmuir two seasons. Probably I saw him three or four times each season. [88]

TESTIMONY OF DR. PATRICK. J. MANGAN,
a witness called on behalf of the defendant, after
being first sworn, testified as follows:

I am a physician and surgeon licensed to practice in the State of California. I have been practicing for thirty-six years. I am a graduate of Cooper Medical College in San Francisco. That is now the medical department of Stanford University. I be-

(Testimony of Dr. Patrick J. Mangan.)
long to the San Francisco County Medical Association and am now connected with the Southern Pacific Company. I was connected with the Southern Pacific in 1920, 1921 and 1922. The handwriting on the third page of Government's Exhibit 2-A is a photograph of my handwriting. The document referred to refreshes my mind that I made an examination of this man. I don't recall the exact instance other than what this discloses. It discloses that I made an examination on January 9, 1922. It was a physical test examination for employment as a stenographer for the Southern Pacific. It was an examination of the vision and hearing, heart, lungs and genital organs and examination for any deformities and general mental makeup. I have classified him here as first-class.

Q. At the time you made the examination, Doctor, did you make any record of any appearance of any abnormality in this man's mental or physical makeup?

A. It is not recorded.

Q. If there had been any such abnormality would you have made a note of it?

A. I believe I would.

Cross Examination

I have no recollection of this man and if it weren't for my signature on the exhibit I could not say that I ever heard of him. The examination took probably fifteen or twenty [89] minutes. I did not make a mental examination other than noting the character-

(Testimony of Dr. Patrick J. Mangan.)

istics as to whether he was quick or slow. I did not make the Romberg test or the Babinsky test but made general observation coming into the room and going out.

Q. Well you are not able to say that he might not have been affected with a mental affliction at that time?

A. Why certainly not.

Q. If he had been in a period of remission from some mental trouble you could have examined him physically and found nothing wrong but that wouldn't have affected the fact that he might have been affected mentally?

A. The only way I could judge a man's mental state would be to judge what he said and his answers and there was nothing said or nothing done on that occasion to cause me to note anything of a mental defect.

I have not had extensive experience with mental patients, any more than any other type of patients.

TESTIMONY OF HELEN KAFFER,

a witness called on behalf of the defendant, after first being sworn, testified as follows:

From July 1918 to June 1919 I was employed by the Southern Pacific Railroad Company as a clerk. My particular duties were that I made out all the passes and handled all the personal records, the filing and filling out of all personal records. I recall the

(Testimony of Helen Kaffer.)

plaintiff in this case, Arthur J. Eide. He filled out an application and I witnessed his signature and asked a few questions. I said "Is your hearing good?" and he said "Yes" and "Is your eyesight good?" He said "Yes". I asked him what education he had had. He said he had had an eighth grade education. If he didn't answer all the questions on the application I would ask him to answer "Yes" or "No" in that instance. I recall the plaintiff but it would be hard to say how often I saw him because [90] I was working in the office and he was in the machine shop and was firing on the road, and possibly when he would come in the office I would see him or when he was going to and from work. When he was working in the shop I would say I saw him once a day, maybe twice a day. I did not carry on any conversation with him, but I met him there on the job when he applied and filled out his application and I saw him to say "Hello" or pass the time of day.

Referring to Government's Exhibit 2-B, I recognize the photostated handwriting as that of Arthur J. Eide.

Q. Did you in all the time you knew Mr. Eide observe anything unusual about him mentally or physically?

A. I did not.

Cross Examination

I did not know Mr. Eide intimately enough to know whether or not it was true that he might have been a little off mentally.

(Testimony of Helen Kaffer.)

Redirect Examination

Mr. LYNCH: At this time I would like to read from Government's Exhibits 2A and 2B.

The COURT: Proceed.

Mr. LYNCH: Referring to question No. 7: "Give complete record of your services for last five years, giving each year in regular order down to date. State what railroad experience, if any, you have had, giving names of roads, in what capacity employed and length of service on each road. If you have not previously been employed by a railroad company, state by whom, when, where and how employed. Name of railroad or other employer. J. B. F. Davis & Son, San Francisco, California, 240 Sansome Street. Placing fire insurance from 11/28/12 to 6/30/17. U. S. Army, Balloonist, 7/23/17 to 1/29/19. U. S. Housing Corporation, Vallejo, [91] California. Vallejo California, Clerk. From 4/1/19 to 6/1/19. Merchants Garage, San Francisco, California. 35 Natoma Street, Mechanic from 9/1/19 to 4/1/20. Yreka Baseball Team, Yreka, California, Yreka, California. Ball player from 4/15/20 to 6/15/20. S. P. Company, Dunsmuir, California, Dunsmuir, California. Machinist Helper from 6/15/20 to 8/28/20. June 1, 1919 to September 1, 1919. Question 8. Have you ever been injured? No. If so, how often, when and at what place?

"How did injury or injuries occur?

"Extent of injuries?

"Do you use intoxicating liquors? No.

(Testimony of Helen Kaffer.)

“If employed at present, by whom? Answer: Southern Pacific Company. * * * Town or City, Dunsmuir, State of California.

“In what capacity are you employed? Locomotive Fireman.

“If not employed at present why did you leave your last place? To better myself.” Now, this is Government’s Exhibit 2A: “Give complete record of your services for last five years, giving each year in regular order down to date. State what railroad experience, if any, you have had, giving names of roads, in what capacity employed and length of service on each road. If you have not previously been employed by a railroad company, state by whom, when, where and how employed.

“J. B. F. Davis & Son, San Francisco, California. 240 Sansome Street. Clerk. 1912 to 1917.

“U. S. Army 1917 to January, 1919.

“U. S. Housing Corporation, Vallejo, California. Vallejo, California. Stenographer. February, 1919 to May, 1919. [92]

“Sierra Auto Company, Reno, Nevada. Reno, Nevada. Stenographer and bookkeeper from May, 1919 to December, 1919.

“Merchants Garage, San Francisco, California. 35 Natoma Street, clerk from January, 1920 to June, 1920.

“U. S. Immigration Station, Angel Island, California. Stenographer from February, 1921, to May, 1921.

(Testimony of Helen Kaffer.)

“Southern Pacific Company, Dunsmuir, California. Fireman, June, 1920, to February, 1921, and June, 1921 to October 1921.

“Question 11: If not employed at present time why did you leave your last place? Business slow—cut off.”

TESTIMONY OF DR. ELMER L. CROUCH,

a witness called on behalf of the defendant, after first being sworn, testified as follows:

I am a physician, a graduate of the Missouri Medical College, now Washington University of St. Louis, Missouri. I am a member of the Illinois State Medical Society and American Medical Association and Neurological Society. I have been with the Veterans' Administration since 1921 and have specialized in nervous and mental diseases since 1897. I have been examiner for mental and nervous diseases in the diagnostic center at the Veterans' Administration Hospital at Palo Alto since January, 1928. The cases that come before me at the diagnostic center are problem cases that are sent to the diagnostic center from the district offices in the western part of the United States extending from about Denver, Colorado, and El Paso, Texas, to the Pacific coast. My examinations have been to determine the nervous and mental diseases of the claimant.

I examined Arthur J. Eide in November 1927 at the Veterans Hospital at Palo Alto upon his admission to that [93] institution. I have in my hand

(Testimony of Dr. Elmer L. Crouch.)

a copy of the examination report made by me at that time. That was the first time I examined him. I first took a history. He was asked information regarding his family and his personal history, his military history and his post-war history and his history after his discharge from the service. Then he was asked what his symptoms were, what his complaints were, and the complaints given were recorded. Then I made a physical examination, a neurological examination and a mental examination.

The family history—I may state that in addition to the information obtained from him there was a social service report that was supposed to have been made by the mother and part of the family history was quoted from that social service report.

The father was John P. Eide, a native of Norway, living and aged sixty-three, good health. Mother, Bertha K. Kibstad, a native of Norway, living, age sixty, good health. One brother and two sisters, living and good health. There were two still births and one child died seven days old. Denies knowledge of nervous or mental diseases in family. That history was obtained from the social service report. That was then in the file and in parenthesis is quoted, or a note “Obtained from patient’s mother.”

Personal history: “Born in Tacoma, Washington, January 20, 1893, fourth of seven children born. Was considered a normal baby and child; very fat and plump. Walked at fourteen months. Talked at average age. Was very quick to learn. Not consid-

(Testimony of Dr. Elmer L. Crouch.)

ered a nervous child. Had measles, mumps, chickenpox and whooping cough when a child; in about 1917 had an operation on nose at Lane Hospital. Started to public school at about six years of age; finished eighth grade and then spent two years in commercial school taking [94] bookkeeping and stenography. Then accepted a position with Presto Light Company, San Francisco, as bookkeeper; worked one and one-half years at \$40.00 to \$50.00 per month; was let out because he fell down on work. Worked two months as billing clerk for Southern Pacific Railroad. Then took position with Davis & Company, insurance brokers, as clerk. Worked five years and was drafted. Used alcoholics moderately in a social way. Smoked cigars occasionally. Denies masturbation. Contracted gonorrhoea when about twenty years old; was treated by Dr. Bill, San Francisco. Lasted about two years. Finally cured by Dr. Apple. Was a good mixer; interested in athletics. Has been arrested twice; once for speeding on motorcycle, fined \$10.00. Another time for speeding in automobile; fined \$25.00." He never married. He says "Because he could not afford it." His military history, he stated "He was drafted May 17, 1917, at San Francisco. Sent to Monterey, California, and a few days later transferred to Camp Green. Assigned to Eighth Field Signal Battalion; about the middle of 1918 sent to balloon school, Fort Omaha. Contracted influenza during fall of 1918; in base hospital for about six weeks and returned to duty. About December, 1918, was made First Sergeant.

(Testimony of Dr. Elmer L. Crouch.)

Was sent to Presidio in charge of a detachment and discharged latter part of January, 1919. Honorable discharge without disability."

His post-war history is "After discharge went to parents' home; got a job washing cars. After two weeks was let out. Does not know why. Went to Reno, Nevada. Worked for Sierra Auto Supply Company stenographer and bookkeeper for two months and let out, too slow. Went to Yreka, California. Played baseball for about a month. Caught four games at \$20.00 per game. Then went to Dunsuir; got a job as extra brakeman on Southern Pacific Railway. Worked irregular- [95] ly for about two and a half years as extra. Did not get a regular run. Later, mother helped him buy a cheap car and he greased automobiles for regular customers for about six months. Then with a partner went into garage business at Divisadero and Grove Streets, San Francisco. Business was slow. After two years partner closed him out because he owed him \$200.00 that he could not pay. Was in the middle of 1926. Since then, worked in a garage about two weeks during past summer. Mother states about four years ago patient complained of headaches and the family noticed he was nervous; talked funny; would make queer remarks, as he wanted to know what was to become of parents in their old age."

Mr. HJELM: Just a moment, four years ago, that would be four years back from what date?

A. Prior to this examination.

(Testimony of Dr. Elmer L. Crouch.)

Q. That would be 1923. All right.

“Would stay in bed all day; thought brother got the best of everything. During summer of 1926, family physician advised family to take patient for a trip. Was taken for a visit up to State of Washington and Idaho. Did not get interested. Would sit and stare. After they returned home, patient did not try to work. Had a fairly good appetite. After meals, would take a walk to park. Took tennis balls and racquet; would bounce balls around court but not participate in games. After dinner, he would take short walk and retire early and seemed to sleep all right. Movements were very slow and he seemed to have no initiative; would only do what he was told to do. Mother says doctor said patient had syphilis. Was taken to Dr. Gross, who made a blood test and injected something in hips on alternate days; was given about twelve injections. Also was given some electric treatments. Patient states he was told that he was being treated for [96] gonorrhoea. Sister paid the bill of \$225.00. Remained at home with parents until brought to this hospital, October 30, 1927, where he has since remained as a patient.” His subjective complaints, that is the complaints that he made in answer to the questions what he complained of, he made no spontaneous complaints. In answer to questions when insisted on some kind of an answer he said, “Nothing. Don’t feel sick. Never noticed any change in condition. I am like I always have been.” Those were answers to questions that were asked him.

(Testimony of Dr. Elmer L. Crouch.)

Physical examination. Patient was negative for any physical diseases. Do you want me to read the physical examination? I will read it. "Patient is medium build, white male, fairly well developed and nourished. Height sixty-seven and three-quarter inches. Weight 147 pounds dressed. Skin is rather oily, brunette. No eruptions or cicatrices. Hair: Dark brown, moderately thick, oily. Male distribution. Nails smooth, long and unkempt. No palpable enlargements of lymph nodes or adenopathies. Thyroid not palpably enlarged. No stigmata, anomalies or deformities. Head: Moderately large. High, prominent forehead. Wears seven and a quarter hat. Palate dome shaped. Eyes: Brown. Ears, nose and throat normal. Teeth: several crowns and caries", Breaking down of the teeth, and here it refers to the dental report. "Mouth: Hygiene poor. Chest: Moderately broad, deep; mobility good. Palpation, percussion and auscultation negative. Breath sounds clear. No rales. Heart: Size and position within normal limits. P.M.I. Fifth interspace, midclavicular line. No murmurs, arrhythmia or other abnormal sounds. Pulse: 72; after fifty hops, ninety; after two minutes, seventy-two. Blood pressure 138 systolic and 90 diastolic. Pulse was forty-eight. No varicosities or [97] thickening of superficial arteries. Abdomen and contained viscera: No tympanities, distension, tenderness or palpable masses. No hernia or hemorrhoids. Congenital urinary organs are—no abnormalities noted. Genitalia fairly well developed. Bones, joints and extremities: No abnormalities or deformities."

(Testimony of Dr. Elmer L. Crouch.)

Laboratory findings negative. Blood Wasserman was negative. The neurological examination was: "Cranial nerves: Rather marked facial stare. Palpebral fissures equal, rather wide. Seldom bats his eyes. Rather blank facial expression. Holds mouth rather firmly closed. Seldom swallows—mouth full of saliva. When patient speaks, has trouble in preventing saliva running out of mouth, otherwise no drooling present. No motor or sensory disturbances demonstrated. Pupils round, equal, react to light, accommodation and consensual. No nystagmus. No muscular weakness or history of diplopia. No special sense disturbances demonstrated. Tongue, broad, flabby, protruded in median line, slightly tremulous. No trouble in voluntary deglutition. Voice monotonous. No definite speech defect. Spinal nerves: No motor or sensory disturbances demonstrated. No ataxias or tremors. Station and gait: No swaying in Romberg position." The patient stands with heels and toes together with eyes closed or looking up as at the ceiling and if there is certain neurological diseases there then the patient sways or falls. That is negative. "Swings arms when he walks. Holds head and body rather stiffly. Does not look to right or left. No festination, propulsion or retropulsion. Voluntary movements are rather deliberate and slow. Passively, extremities are very flexible. There is present pronounced catalepsy; an extremity remains in any position placed until fatigue causes it to fall." In certain conditions the arms are placed in an [98] awkward position and

(Testimony of Dr. Elmer L. Crouch.)

remains there until the muscles tire out and fall. "Reflexes: superficial, cremasteric, abdominal and planter active with marked planter defense reaction. No Babinski, Chaddock or Oppenheim demonstrated. Deep biceps, triceps, patellar and ankle rather active. No clonus. No bladder or rectal sphincter disturbance. Vaso-motor: Skin flushes on stroking."

Now, the mental examination. "Patient walked into examining room slowly. Rather untidy and careless in personal appearance. Stood like a statue staring straight ahead. When requested to sit in chair, did so, continued to look straight ahead. When interrogated, would at times look at examiner and answer in more or less of a stereotyped manner. After an intermission of several seconds, had to elevate his chin and guard himself to prevent saliva from spilling over from mouth. Seldom batted or winked eyelids. Did not swallow. Volunteered no information. Did not speak only in answer to direct question. Manifested no interest in his surroundings; showed no evidence of emotion. Did not smile or show evidence of anger or embarrassments. Gave age, birthday, home address, day of week, month and year but could not give date of admission to this hospital. Recognized place but didn't notice anything wrong with patients on ward because he said he did not pay any attention to them. In answer after questioning, said he was brought here by his mother and brother. That Walter Smith arranged for a doctor to come to the house to see him, and the

(Testimony of Dr. Elmer L. Crouch.)

next day he was brought down here. Why?" The question was why. "Told I was entitled to treatment here for the same as Dr. Gross was treating me. What were you treated for? Gonorrhoea'. Patient does not recall dates in other respects and does not give a very straightforward account of his activities since service, especially for past two years. Has [99] a fairly good retention of school knowledge. Calculation fairly good. Answers to geographical and historical questions fairly accurate. Answers are very slow. Says he reads the papers, mostly about aviation. Could name several aviators. Not able to demonstrate any definite delusions or fixed ideas except mother states patient frequently says he is not treated as well as his brother, and that he frequently made queer disconnected remarks. Patient says he thinks there is nothing wrong with him. Answers to most questions are 'no' or 'I don't know'. Not able to demonstrate the presence of hallucinations. There is marked dulling of emotional tone. Attention fairly good. Reactions very much delayed. Associations very slow. There is a marked retardation or blocking of thought process with more or less of a stereotyped answer to questions on the most part of a negative character. Psychomotor activity retarded and blocked; shows marked cataleptic attitudes. At times, speech is somewhat explosive in character. Patient was admitted to this hospital through Regional Office, San Francisco, for treatment of 'Psychosis, Undiagnosed' October 30, 1927.

(Testimony of Dr. Elmer L. Crouch.)

“Summary: Patient apparently normal child. Gonorrhoea prior to service. Had influenza in fall of 1918 in Base Hospital for six weeks. Denies delirium or double vision. Recovered and returned to duty, after which promoted to Sergeant. After discharge, had trouble holding jobs. Was let out four years ago. Began to have headaches about the same time noted his queer conduct and remarks. Gradually became less efficient. Would remain in bed all day. Sit and stare without speaking for long time, manifesting no interest. At present, some impairment of memory. More or less stereotyped movements and negative answers to questions. Dulling of emotional tone. Apparent blocking of thought processes. [100] Flexibility of muscles with marked catalepsy. Impairment of judgment and lack of insight suggest the diagnosis of dementia praecox, catatonic type.”

Catatonic type is a type of dementia praecox which is characterized by mannerisms, negativeness, that is opposed to what you want him to do and the most outstanding thing is this catalepsy, that he remains in a position you place him. Those are the most outstanding manifestations of catatonic type. “However residuals of encephalitis must be excluded.”

I mean the after effects of—we had during the war and since the war a number of cases in which the infection that affects the brain, certain parts of the brain, and frequently in that case has complete recovery but there remain certain manifesta-

(Testimony of Dr. Elmer L. Crouch.)

tions of this diseased process that continue for a long time. Now, some of the manifestations of the acute condition are double vision, which is one of the most important diagnostic signs, and certain paralysis or weakness of muscles. We didn't find those but we take that into consideration for further observation to differentiate between encephalitis and dementia praecox.

Q. Did you find any residuals of encephalitis?

A. We didn't find any evidence of encephalitis.

Q. Did he or didn't he have encephalitis?

A. He did not.

A preliminary diagnosis was made of dementia praecox, paranoid type, or catatonic type, with notation that he should be observed for manifestations of encephalitis lethargica. It was my conclusion that he was then a dementia praecox subject.

The examination which I have outlined takes in various interviews with the patient covering a period of several days when he was in the ward. The purpose of the examination was [101] that he was sent to the hospital for treatment of psychosis, undetermined. It was just a regular routine hospital examination, without any reference to insurance or anything like that.

Q. From that examination that you made of him at that time and your examination as you have testified to in court, and assuming that the testimony of the defendant's witnesses as given here in court today be true—By the way, may I ask preliminarily, you have been in court here?

A. I have been.

(Testimony of Dr. Elmer L. Crouch.)

Q. And heard all the testimony of the defendant's case. Now then, by taking into consideration such testimony rendered in behalf of the defendant and the examination made by you as you have testified were you of an opinion as to whether or not he was wholly and totally disabled from performing any useful occupation, in let's say, March, 1919?

A. I have an opinion based on testimony that was given here this morning.

Q. And also on your own examination, as you have testified. You have formed an opinion?

A. Yes.

Q. And what is that opinion?

A. I think the man was able to follow a gainful occupation in March, 1919.

The COURT: When would you fix the time when you think the probabilities were he was unable to follow such an occupation?

A. From my own observations I couldn't fix the time, even attempt to fix the time of the onset but from the information or from the witnesses this morning the industrial letup occurred about 1922 or '23.

The COURT: In other words you believe that he was not afflicted up to that time with any dementia praecox?

A. There was no manifestation revealed here in the evidence [102] this morning that I caught.

The COURT: If this morning there was limited testimony by a certain woman, a woman whom he visited shortly after he left the service—

(Testimony of Dr. Elmer L. Crouch.)

A. Interposing: This morning was wholly, as I understand, devoted to his industrial activities after he came out of the service.

The COURT: Oh, I see. You would conclude from that——

A. Interposing: I would conclude from that that the man was able to carry on, yes, and continue——

The COURT: Interposing: Your attitude is it speaks for itself?

A. I think it speaks for itself.

The COURT: Let me ask you, are you one of those doctors who accept a doctrine that as soon as you can trace any act which deviated from normalcy sufficient to be identified as an act in dementia praecox that from that moment you establish it you consider he would be totally and permanently disabled from the first appearance of dementia praecox in its early stage?

A. Do you want me to answer that yes or no? Do you want me to——

The COURT: Interposing: Yes, certainly, I have no objection. In other words, you heard the testimony this morning. Now, do you accept the doctrine that just as soon as you can distinguish certain conduct connected with subsequent conduct to show the patient is dementia praecox even in the earlier stage, if we can use that term in that form of language, that that person was totally and permanently disabled as according to the definition which was given here by the Government?

(Testimony of Dr. Elmer L. Crouch.)

A. I don't consider it so. If we were to consider every dementia praecox and lock him up they would have a job in [103] order to build a hospital to lock them up in.

The COURT: In other words, you realize—I presume you make the statement you come in contact with a great many people who are affected with the earlier stages of dementia praecox?

A. I certainly would. Dementia praecox has an insidious slow onset. Sixty per cent, according to statistics, occurs in individuals with an inherent, what we call a biological defect; that is pertaining to their mental makeup and their ability to react to the situations. We cannot demonstrate a biological defect in the eyes no more than we can—

The COURT: Interposing: Do you classify a moron as a dementia praecox?

A. Not necessarily. A moron—the distinction between a moron and a dementia praecox is the moron never developed, never got anywhere. He never developed. Dementia praecox develops to a certain stage and then he breaks, so to speak. Praecox means prematurely demented. The climax was reached, the height in his life was reached at an early stage, and then he started down. Praecox usually starts around—formerly, before the word praecox was used the word adolescent insanity was used. It starts around adolescence and sometimes manifests itself as late as thirty-five years of age, some cases forty years of age.

(Testimony of Dr. Elmer L. Crouch.)

The COURT: What percentage of the population, do you consider, roughly, will be ultimately affected with that disease?

A. I don't know as there is any way of determining who might be—what portion will be affected but there are a great many people going about in everyday activities of life who are potential dementia praecox subjects. There are many praecoxes who went through the war without any disturbance. Usually a praecox comes on them and there is something of—it is a [104] splitting off of the personality of the individual, a change of personality. They begin to split off from the realities of life and they gradually go on until they become centered within themselves. They shut themselves up, as it were, in a shell and there is a flattening of the emotions. The emotional tone is much greater—greater affected than the understanding, more earlier affected than the understanding and later on becomes retrograded. Go on high up in early life then go backward, some down the scale.

The COURT: Could you give us any test or any way, in other words, by which we could determine at the time of dementia praecox a person, who has that misfortune, reaches a point where they are totally and permanently disabled. What would be your test, what would be your observation. what would be their conduct or appearance or manners that would at once cause you to classify them as dementia praecox before they had reached a point where they are totally and permanently disabled?

(Testimony of Dr. Elmer L. Crouch.)

A. That would be when they are unable to make adjustment with their environment. Well, he might make an adjustment. He very often does carry on in a partially, at least, normal way up to some incident in his life when he breaks, when he begins to manifest his inability to make an adjustment. Possibly all—Insanity, we speak of it in a broad term. If a man is insane it is his inability to make adjustment to common standards of his neighbors and that very largely would depend on his environment, station in life.

The COURT: You haven't had enough facts in the case to enable you to be in a position to tell at what point it probably occurred?

A. Well, I think from the information, the impression had when I examined him and also the information here I should [105] say he became a social problem around 1922 or 1923, that is, he should be considered as a problem around 1922 or '23.

The COURT: Then he was totally and permanently disabled?

A. Yes, and I think he was beginning and had got so far disabled at that time because then is when he began to make his, according to the history, when he first started in his inability to make economic and social adjustments.

The COURT: No further questions on the part of the Court.

Mr. HJELM: That is all.

(Testimony of Dr. Elmer L. Crouch.)

Cross Examination

An early dementia praecox shows, dependent upon the type, some mannerisms, some flattening of the emotions and particularly in the catatonic type, they are characterized also by periods of excitement and periods of depression. They are the things that show themselves early with the disease. Later in the disease they begin to show the deterioration. The personality change is the one early manifestation, a gradual onset is noted fairly early in the disease. It is inability to make adjustment to his environment.

Q. If you had a case of a young man who was neat in his appearance prior to a certain time, affable, agreeable, sociable, reliable in his work, efficient in his work, and something occurred and immediately after he is unable—undependable in his work, inefficient, uninteresting, dull, not interested in conversation, rather dull mentally toward intimate friends, would you say that would be—what a personality change in that respect would indicate?

A. That would indicate—it might indicate a dementia praecox dependent on what develops. [106]

Q. Well, you have sat in court and heard the testimony in this case?

A. Yes.

Q. You heard the description of his former employer in this particular case Mr. Romani, and Mrs. Martin, who was in the same office with him, that he acted dull, absolutely different from the way he appeared before he went to war. Would you say if that

(Testimony of Dr. Elmer L. Crouch.)

testimony be true that he undoubtedly had dementia praecox in the spring of 1919?

A. Oh, might be manifestations, early manifestations of praecox.

Q. Yes. Now, Doctor, do you believe like these doctors who testified for the plaintiffs, Dr. Conzelman of Stockton State Hospital and Dr. Wilder, in town here, that an acute infection could cause dementia praecox or be the exciting cause that sets it in motion?

A. It is not the usual history on cases of dementia praecox.

Q. But it is not unusual, is it?

A. It might happen.

Q. In this particular case you have heard the testimony here. Don't you think this man had encephalitis instead of influenza in the fall—

A. Interposing: If I thought so I would have said so.

Q. What?

A. If I thought so I would have said so on my examination. I didn't find anything that manifested, any manifestations of encephalitis.

Q. There were symptoms of encephalitis, were there not?

A. The symptoms didn't fit into encephalitis at all.

Q. Didn't you suspect encephalitis?

A. That diagnosis would have been made before he came to the hospital.

(Testimony of Dr. Elmer L. Crouch.)

Q. Now, Doctor, a mask-like expression and headaches, would that indicate, it would make you strongly suspect encephalitis [107] lethargica or sleeping sickness?

A. I don't think that alone would.

Q. Well, they are two of the common symptoms?

A. Headache is a common symptom—Headache is a common symptom dependent upon the location of the headache, depending largely upon the part of the brain involved. A mask-like face, his expression, may or may not be a manifestation of praecox or of encephalitis. In the testimony of Sergeant Barrett, where it is stated that Eide complained of headaches and seemed sleepy and drowsy and tired all the time, that might very easily have come from influenza.

Q. It would also be present in an acute stage of encephalitis, wouldn't it?

A. Yes. It might come from any other infection.

Referring to the fact that a number of patients at the mental hospital play baseball, I think that they attempt to have the patient exercise and get interested in something. I don't think they play very strong baseball. Most of the baseball games in the hospital are played by employees. They try to get them interested in anything that will open up an interest to the man who could play baseball. I can't very well conceive that a man could catch a game of ball, of baseball, with his judgment very badly disturbed. It is true that insanity very seldom runs an even course, a man will get better or worse, has

(Testimony of Dr. Elmer L. Crouch.)

periods of remission when he gets better and then he gets worse. During their praecox they have periods, sometimes they are worse than other times.

Q. Don't you think it is possible Mr. Eide in this case could have been in a period of remission when he was up at Dunsmuir trying to work for the railroad?

A. Well, there wasn't anything manifested, there wasn't anything to my mind brought out to indicate this man had any [108] active psychosis until 1922 or 1923.

Q. As a matter of fact don't the hospital records show, Doctor, at the beginning of the incompetency, it started in 1919?

A. We will refer to the record. There is a question mark there.

Q. Well, I will read you here, "Is patient bed-ridden? No. Is patient competent? No. If not approximate date of beginning of incompetence? 1919", with a question mark after it. What does that indicate?

A. He was incompetent when—the fact, here, that he was incompetent all the time he was in the hospital.

Q. Do you think that record is correct or incorrect when it says the beginning of the incompetency started in 1919?

A. I don't know who put the question mark on there. I do not know whether or not he had gonorrhea, that is his statement. At one time he denied any venereal disease and another time he says he was treating with a doctor. I did not find any evi-

(Testimony of Dr. Elmer L. Crouch.)

dence of gonorrhoea. He said he had had it when he was twenty years old or something like that. Even if he had had gonorrhoea I don't think it would have had anything to do with his present mental condition. He did not have any syphilis, at the time of my examination. He gave a history of having been treated for it and I don't think that this was an hallucination.

Q. At the time he gave you the history he was insane, was he not?

A. Well, he answered—his intellect wasn't disturbed but what he answered fairly intelligently to questions.

I don't think that syphilis has anything to do with dementia praecox, as the insanity caused by syphilis is of an entirely different type. There was no evidence of tuberculosis and the fact that the Romberg test showed negative is [109] not a factor in determining praecox. There was no manifestation of an organic disease demonstrated. Double vision is one of the first manifestations in encephalitis lethargica.

I think shutting a patient up in the early stages of dementia praecox is not only good practice—I think what causes the praecox to react is the difficulty of adjustment and the difficulty in finding themselves and something should be done to waken them with a certain thing, a line that they are interested in. That is part of the treatment of praecox. They make adjustment under supervision.

TESTIMONY OF DR. RICHARD T. O'NEIL,

called as a witness for the defendant, after being duly sworn, testified as follows: [110]

I graduated from Emory University, Atlanta, Georgia, in 1915. I have followed psychiatry since 1919. I have been with the Veterans Administration since 1923 and am at the hospital at Palo Alto. I know Mr. Eide and I examined him on June 11, 1930. I was one of a board of three of which Dr. Crouch was one of the members. Exhibit 5-C in evidence bears my signature and is the report that I made at that time. The examination is similar to that which Dr. Crouch has testified to giving a family history, personal history, military history and post-war history. Physical examination was a very little change, I am sure. Neurological, at that time, were very little changed. We made an examination. He thought he had an umbilical hernia and we called in a surgeon and found none. In his mental examination, quite a little difference since his admission to the hospital. Since his admission to the hospital the patient's condition required supervision. At periods he became contentious, impulsive, attacking patients and attendants. For long periods he would not eat unless spoon fed, became untidy, careless and destructive. At the present time he was rather tidy in personal appearance. Came into the examining room with an attendant, stood like a statue, staring straight ahead, mask-like appearance of face, slow in his movements. When questioned answered slow, when questions were asked he

(Testimony of Dr. Richard T. O'Neil.)

answered slow after yes or no. Volunteered no information and frequently answers a question with "When can I go?" Shows no interest in surroundings, no evidence of any emotion. Memory poor. To many questions would reply "I don't know." His retention of school knowledge was poor, making mistakes in simple calculations, refusing to answer. He was oriented from place and person and could not give date but named the hospital and ward surgeon. He stated that he hears voices, pays no attention to them and will not tell what he [111] hears, both men and women's voices. They tell him "To save the world, as we will all die tonight." The history goes further—

Q. Interposing: You made a diagnosis at that time?

A. Yes.

Q. What was it, dementia praecox?

A. Dementia praecox.

Q. In your diagnosis did you make any finding of encephalitis?

A. Well, not in this case. Well, not in this history. I have noticed from reading the reports of the hospital this patient did—we make the suggestion to the staff that encephalitis should be considered. However, as time went on the praecox symptoms became so pronounced that if there was any evidence of encephalitis it was taken up in the progress of the praecox.

Q. Then you finally concluded that there was no question but what this was dementia praecox and there was no encephalitis?

(Testimony of Dr. Richard T. O'Neil.)

A. Well, I won't say there wasn't any encephalitis but if there was encephalitis it was to such a degree that it didn't show any evidence, very mild.

I will admit my opinion that this man was and is constitutionally psychopathic, psychopathic inferiority—he was born an inferior, biological defect. He was a potential praecox all his life and probably went through his early life and in the army, but I find from his history and the testimony I have heard in the court that his psychosis busted through and became pronounced around in 1922 or 1923.

The COURT: When you say it broke through at that time, it became pronounced, you mean at the time it had reached a degree which made him totally and permanently disabled as it is defined in that definition?

A. Yes.

In other words there came a time when he was un- [112] able to adjust himself to the ordinary standard of life. These individuals, we all have to protect our ego and the ability to protect that ego was such that he went out. Praecox to me is not a disease, it is a condition. As long as these men evidence that their behavior is good and they make some economic adjustment they are not total and permanent. It is a condition of the mind of the being and when that condition is such that he can adjust himself to the fellows he is working with and his surroundings, then the praecox has not yet broken out.

(Testimony of Dr. Richard T. O'Neil.)

Q. By the way, Doctor, something was said about treatment, supervision. Would you say that a patient who was born, who was prenatally, predisposed to dementia praecox, who was working as a fireman and playing baseball as Sundays, would you say that would be conducive to maintaining that ability to adjust things, or the other way?

A. Well from his action I should think that occupation would be the best therapeutic one could have.

Q. You say therapeutic. Does that mean that you as a doctor would advise that he should follow an occupation in order to prevent—

A. Interposing: Yes.

Q. Then you would say that any individual, whether he be a lawyer or otherwise, that it is a good idea for him to practice law if he is a lawyer, in order to prevent him from becoming an introspective?

A. Providing that profession is tasteful.

Cross Examination.

In some degree I think it is best for persons with dementia praecox to work. I wouldn't send Eide out now to work. Before his actions become bizarre, it is best in my opinion that a man should be given employment. Of course, when this psychosis becomes manifest so he becomes hallucinated [113] and gives up to such a degree that he can't make an adjustment, it is my opinion of course that this treatment is desirous. When a psychotic patient is sick enough to reach an institution after the mental

(Testimony of Dr. Richard T. O'Neil.)

regression, dilapidation of personality, I very seldom see any of them adjusted to such a degree that they can go out. I said I thought that Eide did have, to me, some symptom of encephalitis. He could have had both encephalitis and dementia praecox because one is an organic condition and the other is functional. I don't believe that this dementia praecox could have been set in motion by an acute infection like encephalitis. I have never seen any case of dementia praecox at an autopsy, where they have been performed, where they have put a finger on anything that we could attribute to psychosis. I think it is purely a functional affair. We see sometimes extra convolutions and we found men who had extra convolutions who never had dementia praecox. Dementia praecox is purely a functional disease. There is a split in the personality between the emotions and the energy. Some people are incompetent in some way and yet they are put under supervision and after making an adjustment make a living.

Q. When do you think his incompetency began?

A. Well, I can't put a specific date except I would say from what I heard in the courtroom the last two days, what you say in testimony, I would say around 1922 or 1923.

Q. That is your signature, isn't it, Doctor? (Exhibiting document to witness).

A. Yes.

Q. I will ask you if you didn't—did you type this report up, was it made under your supervision?

A. Under my direction, yes.

(Testimony of Dr. Richard T. O'Neil.)

Q. This states: "Is he competent? A. No. If not approximate date of beginning of incompetency? 1919", with a question [114] mark.

A. Yes.

Q. Now, what do you say?

A. Well, I say that 1919 if we didn't feel that he was incompetent in 1919 we put the question mark there. We were undetermined. It was questionable if the man was competent or incompetent in 1919 on the information we then had at our hands.

Q. In other words you thought he was incompetent in 1919 but you weren't quite sure so you put a question mark?

A. Well, it would fit either way.

The only information which I obtained was that which I obtained from the family.

TESTIMONY OF MRS. BERTHA EIDE,

Called in rebuttal as a witness for the plaintiff.

When Arthur was working for the Southern Pacific Company at Dunsmuir he would come home and I would see him. He was very nervous and he had headaches just the same. I recall when he worked for the Merchants' Garage. He was there about three months at \$50.00 a month. I think he was nightwatchman or something like that, washing cars.

Mr. GERLACK: That is the plaintiff's case.

(Testimony of Mrs. Bertha Eide.)

Mr. LYNCH: At this time, your Honor, I would like to make a motion for a directed verdict on the ground that no evidence has been brought forth to prove the plaintiff was permanently and totally disabled on the date alleged.

The COURT: The same will be denied. I think it is a matter for the jury.

Mr. LYNCH: May I have an exception, your Honor? [115]

Thereupon the jury retired and returned a verdict for plaintiff and fixed the date of permanent and total disability as of January 29, 1919.

On March 9, 1934, the following stipulation and order was entered into by and between the parties hereto and filed under date of March 12, 1934.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled action that the defendant may have to and including the 31st day of May, 1934, within which to prepare, file and serve its proposed bill of exceptions, and

IT IS FURTHER STIPULATED AND AGREED that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1934 term of said Court to the 10th day of June, 1934,

thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled Court and an order was made by the said Honorable Judge on the 10th day of March extending the term of the court to and including the date set forth in the stipulation. This order was filed on March 12, 1935.

And thereafter on the 8th day of May, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 9th day of June, 1934, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court, within which the judgment therein was entered and [116] which is extended by and under the terms of Rule 45 of the Rules of this court, be extended to and into and so as to include the April 1934 term of said court to the 29th day of June, 1934, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 9th day of May, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on May 10, 1934.

And thereafter on the 12th day of June, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in

this case, defendant could have to and including the 11th day of July, 1934, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1934 term of said court to the 31st day of July, 1934, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 12th day of June, 1934 extending the term of the court to and including the date set forth in the stipulation. This order was filed on June 13, 1934.

And thereafter on the 10th day of July, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 11th day of August, 1934, [117] and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1934 term of said court to the 31st day of August, 1934, thereof. This stipulation was ap-

proved by the Honorable Judge Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 13th day of July, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on July 14, 1935.

And thereafter on the 9th day of August, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 11th day of September, 1934, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1934 term of said court to the 1st day of October, 1934, thereof. This stipulation was approved by the Honorable A. F. St. Sure, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 15th day of August, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on August 16, 1934.

And thereafter on the 10th day of September, 1934, [118] it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to

and including the 13th day of September, 1934, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1934 term of said court to the 20th day of September, 1934, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 10th day of September, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on September 11, 1934.

And thereafter on the 11th day of October, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 12th day of October, 1934, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1934 term of said court to the 2nd day of November, 1934, thereof. This stipulation was

approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable [119] Judge on the 16th day of October, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on October 17, 1934.

And thereafter on the 11th day of October, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of November, 1934, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1934 term of said court to the 4th day of December, 1934, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 15th day of October, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on October 17, 1934.

And thereafter on the 12th day of November, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions

in this case, defendant could have to and including the 13th day of December, 1934, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of [120] Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1934 term of said court to the 3rd day of January, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 13th day of November, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on November 14, 1934.

And thereafter on the 11th day of December, 1934, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of January, 1935, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1934 term of said court to the 23rd day of January, 1935, thereof. This stipulation was

approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 13th day of December, 1934, extending the term of the court to and including the date set forth in the stipulation. This order was filed on December 14, 1934.

And thereafter on the 9th day of January, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant [121] could have to and including the 13th day of February, 1935, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1934 term of said court to the 4th day of March, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 10th day of January, 1935 extending the term of the court to and including the date set forth in the stipulation. This order was filed on January 11, 1935.

And thereafter on the 10th day of February, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including

the 13th day of March, 1935, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1934 term of said court to the 2nd day of April, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 11th day of February, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on February 13, 1935. [122]

And thereafter on the 11th day of March, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of April, 1935, and it was further stipulated and agreed that for the purpose of settling, signing and filing the bill of exceptions in the above-entitled case, the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1935 term of said court to the 2nd day of May, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-

entitled court and an order was made by the said Honorable Judge on the 11th day of March, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on March 12, 1935.

And thereafter on the 11th day of April, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of May, 1935, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1935 term of said court to the 1st day of June, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an [123] order was made by the said Honorable Judge on the 13th day of April, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on April 16, 1935.

And thereafter on the 9th day of May, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of June, 1935, and it was further stipu-

lated and agreed that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1935 term of said court to the 3rd day of July, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the said Honorable Judge on the 9th day of May, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on May 10, 1935.

And thereafter on the 11th day of June, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of July, 1935, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of [124] the Rules of this Court, be extended to and into and so as to include the April 1935 term of said court to the 31st day of July, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court and an order was made by the

said Honorable Judge on the 14th day of June, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on June 15, 1935.

And thereafter on the 11th day of July, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of August, 1935, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1935 term of said court to the 2nd day of September, 1935, thereof. This stipulation was approved by the Honorable A. F. St. Sure, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 11th day of July, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on July 12, 1935.

And thereafter on the 12th day of August, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 13th day of September, 1935, and it was further stipulated and agreed that for the purpose [125] of

preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the April 1935 term of said court to the 3rd day of October, 1935, thereof. This stipulation was approved by the Honorable A. F. St. Sure, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 13th day of August, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on August 14, 1935.

And thereafter on the 11th day of September, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 12th day of October, 1935, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1935 term of said court to the 2nd day of November, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 13th day

of September, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on September 18, 1935.

And thereafter on the 9th day of October, 1935, it was stipulated by and between the parties to the above- [126] entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 28th day of October, 1935, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1935 term of said court to the 16th day of November, 1935, thereof. This stipulation was approved by the Honorable A. F. St. Sure, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 10th day of October, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on October 10, 1935.

And thereafter on the 26th day of October, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 28th day of November, 1935, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the bill of excep-

tions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1935 term of said court to the 14th day of December, 1935, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 26th day of October, 1935, extending the term of the court [127] to and including the date set forth in the stipulation. This order was filed October 28, 1935.

And thereafter on the 27th day of November, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the bill of exceptions in this case, defendant could have to and including the 28th day of December, 1935, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the proposed bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1935 term of said court to the 6th day of January, 1936, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 28th day of November, 1935, extending the

term of the court to and including the date set forth in the stipulation. This order was filed on November 29, 1935.

And thereafter on the 26th day of December, 1935, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the proposed bill of exceptions in this case, defendant could have to and including the 28th day of January, 1936, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1933 term of said court to [128] the 20th day of February, 1936, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 27th day of December, 1935, extending the term of the court to and including the date set forth in the stipulation. This order was filed on January 2, 1936.

And thereafter on the 25th day of January, 1936, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the proposed bill of exceptions in this case, defendant could have to and including the 28th day of February, 1936, and it was further stipulated and agreed that for the

purpose of preparing, settling, signing and filing the bill of exceptions, in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1935 term of said court to the 19th day of March, 1936, thereof. This stipulation was approved by the Honorable Harold Louderback, Judge of the above-entitled court, and an order was made by the said Honorable Judge on the 27th day of January, 1936, extending the term of the court to and including the date set forth in the stipulation. This order was filed on January 30, 1936.

And thereafter on the 27th day of February, 1936, it was stipulated by and between the parties to the above-entitled action that for the purpose of preparing, serving and filing the engrossed bill of exceptions in this case, defendant could have to and including the 15th day of March, 1936, and it was further stipulated and agreed that for the purpose of preparing, settling, signing and filing the en-[129] grossed bill of exceptions in the said case the October 1933 term of the above-entitled court within which the judgment therein was entered and which is extended by and under the terms of Rule 45 of the Rules of this Court, be extended to and into and so as to include the October 1935 term of said court to the 4th day of April, 1936, thereof. This stipulation was approved by the Honorable Harold Louderback on the 27th day of February, 1936,

extending the term of the court to and including the date set forth in the stipulation. This order was filed on February 28, 1936.

Dated: February 27, 1936.

AL GERLACK,

Attorney for Plaintiff.

H. H. McPIKE,

United States Attorney.

Attorney for Defendant. [130]

STIPULATION.

IT IS HEREBY STIPULATED by and between the above-entitled parties and their respective counsel that the foregoing bill of exceptions is true and correct, and that the same may be settled and allowed by the above-entitled court and made a part of the record in this case.

AL GERLACK,

Attorney for Plaintiff.

H. H. McPIKE,

United States Attorney.

Attorney for Defendant.

ORDER APPROVING AND SETTLING BILL OF EXCEPTIONS.

The foregoing bill of exceptions is duly proposed and agreed upon by counsel for the respective parties, is correct in all respects, and is hereby approved, allowed and settled and made a part of their record herein, and said bill of exceptions may

be used by either parties plaintiff or defendant upon any appeal taken by either parties plaintiff or defendant.

Dated: March 14, 1936.

HAROLD LOUDERBACK,
United States District Judge. [131]

[Title of Court and Cause.]

ORDER RE TRANSMITTAL OF EXHIBITS
TO CIRCUIT COURT OF APPEALS.

IT IS HEREBY ORDERED that all of the original exhibits may be withdrawn from the files of the above-entitled Court and of the Clerk hereof, and by said Clerk transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of said record on appeal; said original exhibits to be returned to the files of the above-entitled Court upon the determination of said appeal by said Circuit Court of Appeals.

Dated: This 30th day of March, 1936.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed Apr. 1, 1936. Walter B. Maling, Clerk. [132]

[Title of Court and Cause.]

PRAECIPE.

To the Clerk of said Court:

Sir:

Please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal heretofore sued out and perfected to said court, and include in said transcript the following pleadings, proceedings and papers on file, to-wit:

1. Complaint.
2. Answer to complaint.
3. Petition for appeal.
4. Order allowing appeal.
5. Assignment of Errors.
6. Citation on appeal.
7. Bill of exceptions.
8. Stipulation and order extending time and term within which to file bill of exceptions to March 15, 1936.
9. Order re transmittal exhibits to Circuit Court.
10. Judgment.
11. This praecipe.

H. H. McPIKE,

United States Attorney.
Attorney for Defendant.

Service of the within praecipe by copy admitted this 30th day of March, 1936.

ALVIN GERLACK,
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 1, 1936. Walter B.
Manning, Clerk. [122]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 133 pages, numbered from 1 to 133, inclusive, contain a full, true and correct transcript of certain records, and proceedings in the case of Arthur J. Eide, etc. vs. United States of America, No. 991 Law, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of Thirty-two and 40/100 (\$32.40) Dollars.

Annexed hereto is the original citation on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of April, A. D. 1936.

[Seal]

WALTER B. MALING,
Clerk.

By F. M. Lampert,
Deputy Clerk.

[134]

United States of America.—ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA

To ARTHUR J. EIDE, by Bertha K. Eide, his
Guardian ad Litem, Greeting:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear at a United States Cir-
cuit Court of Appeals for the Ninth Circuit, to be
holden at the City of San Francisco, in the State
of California, within thirty days from the date
hereof, pursuant to an order allowing an appeal,
of record in the Clerk's Office of the United States
District Court for the Northern District of Cali-
fornia wherein the United States of America, appel-
lant, and you are appellee, to show cause, if any
there be, why the decree or judgment rendered
against the said appellant, as in the said order allow-
ing appeal mentioned, should not be corrected, and
why speedy justice should not be done to the parties
in that behalf.

WITNESS, the Honorable Harold Louderback
United States District Judge for the Northern Dis-
trict of California this 28th day of May, A. D. 1934.

HAROLD LOUDERBACK,

United States District Judge.

Receipt of a copy of the citation is admitted this
..... day of May, 1934. [135]

[Endorsed]: Filed May 28, 1934. Walter B.
Maling, Clerk.

[Endorsed]: No. 8178. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Arthur J. Eide, by Bertha K. Eide, his Guardian ad Litem. Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 22, 1936.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

